Immigration law – illegal detention – compensation – measure of damages – psychiatric injuries claim

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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Udu and Nyenty's Application [No. 2]

APPLICATIONS FOR JUDICIAL REVIEW BY PAUL UDU AND VALENTINE NYENTY [No. 2]

GIRVAN J

[1] In the case of the applicants Paul Udu and Valentine Nyenty the court held on 26 September 2005 that their detention and removal from the United Kingdom on grounds of deception was unlawful. It is now necessary for the court to deal with the quantification of the applicants' claims for damages to compensate them for the wrongful imprisonment which flowed from the Immigration Service's decision to detain them and require them to leave the country. The hearing in this issue took place on 11 September 2006. Following the delivery of the judgment of the court on 26 September 2005 the applicants and the respondent were given an opportunity to file such further evidence as they considered appropriate in support of and in opposition to the claim for damages. In each case supplementary evidence was filed. Mr McCloskey QC and Miss Connolly on behalf of the respondent accepted that if the court's decision on 26 September 2005 was correct in law damages as such were an appropriate remedy although the respondents challenge the court's decision by way of appeal to the Court of Appeal which has adjourned the appeal pending the completion of the judicial review application on the outstanding issues.

[2] The personal circumstances of the applicant Paul Udu ("Udu") are dealt with in paragraph [2] of the earlier judgment. It is common case that following his arrest at Belfast International Airport on Saturday 25 June 2004 he was detained until the following Saturday 2 July. Initially he was subjected to questioning at the airport by the Immigration Service and then

the decision was made in the middle of the afternoon 25 June to detain him. Due to lack of space at the normal Immigration Detention Centre at Belfast's Crumlin Road Prison he was detained at HMP Maghaberry until Wednesday 29 June when he was transferred to the Detention Centre. While detained at Maghaberry the applicant Udu was detained in the same facilities as ordinary prisoners. It appears that he was undressed and searched at the prison in accordance with prison procedures. He found this episode demeaning and degrading. On Sunday 26 June he was locked up from 12 Noon until the following morning. Following his release the applicant returned to London he claimed that he felt harassed and embarrassed by the presence of the police at the airport although there is no claim as such against the Police Service of Northern Ireland. They took his passport away for a period and he feared that he was going to be detained again. He cancelled his onward flight to the United States and lost 50% of the price of the ticket. It is not in dispute that the loss amounted to £277 in consequence. us$5,000 had been taken from him when he initially arrived in Belfast. He was given back £2,800 in sterling. It has not been shown that he suffered any financial loss in consequence of this. It is the applicant's case that he was humiliated and embarrassed by the experience of his detention and he was left deeply traumatised. The episode rendered him nervous and suspicious, undermined his confidence in travelling and has made him anxious. He claims to have suffered a form of psychiatric damage in consequence.

[3] The applicant relied on a medical report furnished by Marcellinus Nwaogu, a clinical psychologist at the Department of Psychology at the Psychiatric Hospital at Yaba, Lagos in Nigeria. The report is dated 17 August 2004 following examination on 12 August 2004. This accordingly was carried out a relatively short time after the period of his detention. It appears from the reports that he was referred to his employer's doctors who indicated he was having difficulty concentrating, was forgetful and distressed and has sleep difficulties, frightening nightmares, social withdrawal and fear of closed spaces. During his assessment his speech was relevant and coherent and he appeared to be calm and co-operative. His mood appeared to be depressed. His profile showed an individual likely to experience a reactive depression. On Beck's Diagnosis Inventory 11 (BD 1-11) he scored 34 indicating a severe depression. Psychological tests, clinical interview and observations indicated depression, the depressive symptoms and problems being likely to be associated to the trauma of his arrest and detention. Dr Nwaogu concluded that the proper diagnosis was depression and that he was likely to be receptive to psychotherapy. Despite his positive prognosis he was likely to experience another depressive episode. He concluded the probability of him developing a subsequent episode was 50-60% and the severity of the presenting complaints might be higher.

[4] The medical evidence adduced on behalf of Udu is somewhat unsatisfactory. As noted the report was prepared in 2004 not long after the

incident. It has not been updated and the inference is that there has been no deterioration in his condition and that he has undergone treatment which may or may not have been successful. He does not appear to have been referred back to Dr Nwaogu. Dr Nwaogu's reference to the applicant undergoing chemotherapy as part of his treatment appears odd since normally chemotherapy is a treatment for cancer. Mr Lavery QC suggested that the term may have referred to chemical drug treatment. Technically chemotherapy is the use of chemical substances to treat a disease. In modern terminology the term refers primarily though not exclusively to cytotoxic drugs used to treat cancer. It appears that the applicant was never referred to Dr Nwaogu after his initial examination since Dr Nwaogu makes no reference to such an examination and the applicant has failed to adduce medical evidence of his condition after August 2004. One is left with evidence of a real possibility of another episode of depression (the chances being in the range of 50-60%). This further episode might be more severe although the chance of an increase in severity and the sequelae of such a further episode is not spelled out in the report.

[5] In the case of Nyenty he was detained in similar conditions for the same period. He does not claim to have suffered any medical sequelae. He found the exercise of strip searching particularly humiliating and degrading. He found it offensive to be in a cell with in cell sanitation with the unpleasant smells that generated and he was subjected to having to share a cell with a relatively heavy smoker.

[6] In approaching the question of assessing damages guidance is to be found in a number of decisions the leading one of which in this jurisdiction is Dodds v Chief Constable of the RUC [1998] NI 393. McDermott LJ giving the judgment of the Court of Appeal stated:

> "In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £600 for the first hour during which the plaintiff has been deprived of his or her liberty.
>
> 2. A period of one day (24 hours) should normally attract an award of about £4,000-£5,000 depending upon circumstances."

McDermott LJ cited with approval the judgment of Collins J who in Evans v HMP Prison Brockhill [1999] 2 WLR 103 observed that "a progressively reducing scale is appropriate" and "the daily amount after a number of days is likely to be relatively small." (See also McGregor on Damages 17th Edition at paragraph 3(7)-008 and Lunt v Liverpool City Justices [1991] Court of Appeal Transcripts No 158).

[7] It follows from the authorities that the compensation for days after the first day is not to be assessed by simply multiplying the day's rate with the total number of days. It is also clear from the authorities that regard must be had to all the circumstances of the individual case. The conditions under which a person is detained must be part of the overall picture. In both the present cases the applicant was detained in prison conditions for a significant part of the overall period of detention which was some 7 days. This meant that the applicant was being treated in the same way as a convicted criminal subject to demeaning strip searches and required to share cells in uncongenial and restrictive circumstances. In the case of Nyenty Mr McCloskey QC argued that an award of £12,500 would be appropriate. It seems to me that this figure does represent a fair and reasonable means of approaching damages unless the applicant was entitled in addition to aggravated or exemplary damages. The prerequisite for exemplary damages (oppressive, arbitrary and unconstitutional conduct by servants or agents of the state) are not present and, accordingly, no award of exemplary damages would be appropriate. Aggravated damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation from the injury suffered if the award is restricted to a basic award. Aggravating features can include humiliating circumstances at the time of the arrest or any conduct of those responsible for the arrest and the prosecution which shows that they have behaved in a highhanded insulting malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting a prosecution. Aggravating features can also include the way the litigation has been conducted (see Thompson v Commissioner of Police [1997] 2 All ER 762 at 775(d)-(f)). The evidence does not point to any aggravating circumstances calling for an award of aggravated damages. It appears from the evidence that the Immigration Service acted throughout in good faith albeit that the conclusion they reached in the circumstances was not justified as a matter of law.

[8] Where the unlawful detention results in proved medical consequences to the detained person the award of damages must compensate him for those consequences bearing in mind the principle that a wrongdoer takes his victim as he finds him. In this case there was dispute between the parties as to the extent of the medical sequelae. Mr Lavery QC argued that the award of damages should be assessed at the level of a moderate to severe psychiatric illness or damage caused by the respondent. Mr McCloskey QC contended that the evidence pointed at worst to a form of minor post-traumatic stress disorder. The shortcomings in the medical evidence have already been referred to. It is for the plaintiff to prove his case in relation to the aggravation caused to his health by the detention on the evidence the applicant clearly did suffer a period of post-traumatic depression with consequential affect on his enjoyment of life. Just how long it really affected his life is left unclear on the medical evidence and one must approach his own ipse dixit evidence on the medical consequences of the detention with

caution. The respondents did not seek to cross-examine the medical expert whose report was lodged on behalf of the applicant nor did they seek to call contradictory evidence or have the applicant examined by a third party. The applicant did not seek an adjournment to update or expand on the shortcomings in the medical evidence as filed.

[9] I consider that on the evidence that the damages in respect of the medical sequalae for this applicant should be assessed at the lower end of the moderate post traumatic stress disorder range discussed in "Guidelines for the Assessment of General Damage in Personal Injury Cases in Northern Ireland (2nd Edition)". I consider in the case of Udu the proper level of damages should in total be the sum of £20,277 (which includes the loss of half the value of his American air ticket).

[10] I shall hear counsel on the final form of the order in relation to the applications.