

## **Devlin v. United Kingdom (Application no. 29545/95)**

**From DADEL**

### **1) Reference Details**

Jurisprudence: European Court of Human Rights

Date of decision: 30 October 2001

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697730&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACBCD1763D4D8149>

### **2) Facts**

The Applicant, Mr. Francis William Devlin, an Irish national, alleges that his application for a job in the Northern Ireland Civil Service was rejected, and his complaints of discrimination on grounds of religion were blocked by a certificate issued under section 42 of the Fair Employment (Northern Ireland) Act 1976. He invokes principally Article 6 of the Convention, as well as Articles 8, 9, 10, 13 and 14 of the Convention. This application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force.

In June 1991, the Applicant applied for a position as an administrative assistant with the Northern Ireland Civil Service. He passed a written test but was not invited for interview at that time. In 1992, he was invited to the interview, and was informed on 15 September 1992 that he was being recommended for the position subject to the satisfactory outcome of pre-appointment inquiries. He was informed on 21 October 1992 that he was not getting the position. No reasons were given.

The Applicant believed that the decision not to appoint him must have been taken on grounds of his religious beliefs (he is a Catholic). He had had some unpleasant encounters with the police in the past, but no proceedings had ever been brought against him. He stated that about a week after he was informed that his job application had been unsuccessful, a police officer at a vehicle checkpoint referred to the unsuccessful job application.

The Applicant initiated proceedings before the Fair Employment Tribunal, alleging discrimination contrary to the Fair Employment (Northern Ireland) Act 1976 ("the 1976 Act"). The Northern Ireland Civil Service stated that he had been refused on security grounds, and therefore the Act did not apply. On 21 September 1993, the Secretary of State for Northern Ireland issued a certificate under section 42 (2) of the 1976 Act, certifying that the refusal of employment to the Applicant had been "for the purpose of safeguarding national security and of protecting public safety." The Applicant applied for judicial review of this decision by the High Court. This application was dismissed, stating that section 42 (1) of the 1976 Act was enacted to removed acts for the purpose of safeguarding national security from the sphere of Fair Employment legislation, and that where the State has issued a certificate under section 42 (2), the Fair Employment Tribunal retains no role in hearing or adjudicating the complaint.

### **3) Admissibility**

By a decision of 11 April 2001, the Chamber declared the application admissible.

### **4) Merits**

The Court's decision in *Pellegrin v. France* laid down a new test to be applied to determine the applicability of Article 6 § 1 to public servants. Under this test, the only disputes excluded from the ambit of Article 6 § 1 are those that are raised by public servants whose duties typify the duties of public service, such that the public servant wields "a portion of the State's sovereign power" and is responsible for protecting the general interests of the State. The issue therefore is whether the post of administrative assistant, for which the Applicant applied, is such a position.

The Court states that even if an administrative assistant was part of a department that wielded such influence and could potentially apply for promotion, an administrative assistant does not fall within the category of public servant described in the *Pellegrin* case. Therefore, Article 6 is applicable to the discrimination proceedings that the Applicant brought under that Act.

In assessing whether the Applicant was denied his right of access to a court under Article 6 § 1, the Court notes that this right is not absolute. Where the individual's access is limited, the Court examines whether the limitation "impaired the essence of the right and in particular whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

The Government in this case has justified the restriction on access to court as based on security considerations. The Court therefore finds it necessary to consider whether there is a proportionality between the goal of protecting national security, and the impact which the means employed to this end had on the Applicant's right of access to a court. It holds that the severity of the restriction imposed by the section 42 certificate was tantamount to removal of the courts' jurisdiction, and was not mitigated by other available mechanisms of complaints.

The Court does not examine the Applicant's complaints under Articles 8, 9, 10, 13 and 14.

### **5) Decision**

The Court finds that Article 6 § 1 of the Convention has been breached, and awards 10,000 pounds sterling (GBP) in damages, GBP 12,000 in costs, and interest.