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

THIRD SECTION

CASE OF PERRY v. THE UNITED KINGDOM

(Application no. 63737/00)

JUDGMENT

STRASBOURG

17 July 2003

FINAL
17/10/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Perry v. the United Kingdom,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of

Mr G. RESS, *President*,
Sir Nicolas BRATZA,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 26 June 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 63737/00) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Mr Stephen Arthur Perry (“the applicant”), on 6 October 2000.

2. The applicant, who had been granted legal aid, was represented by Mr P. Cameron, a solicitor practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. The applicant complained, under Article 8 of the Convention, that the police covertly videotaped him for identification purposes and used the material in the prosecution against him.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 26 September 2002, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1964 and is currently detained in HM Prison Brixton.

8. In 1997, there were a series of armed robberies of mini-cab drivers in and around Wolverhampton. Each robbery was carried out in the same way by a person posing as a passenger at night. Each involved violence. The first robbery was committed on 15 April 1997 (for which the applicant was later acquitted). On 17 April 1997, the applicant was arrested and agreed to an identification parade on 15 May 1997. He was released pending the parade.

9. On 30 April 1997, a second robbery, later alleged in count 2 of the indictment against the applicant, was committed. On 1 May 1997, the applicant was arrested in relation to that offence. The applicant again agreed to participate in an identification parade to be held on 15 May and was then released. However, on that date, the applicant did not appear for the identification parade but instead sent a doctor's note stating that he was too ill to go to work. A subsequent identification parade was set for 5 June 1997. Notice to that effect was sent to the applicant's residence. He did not appear for identification on the specified date, stating later that he did not receive such notification as he had changed address.

10. On 27 June 1997, the applicant was arrested on an unrelated matter at which time he gave the address to which the previous notification was sent.

11. On 21 July 1997, a robbery, for which the applicant was charged in count 3 of his indictment, occurred. The applicant was arrested on 1 August 1997 and later acquitted on this count. The applicant agreed to stand on an identification parade scheduled to take place on 11 September. On 3 September, the applicant was interviewed with respect to another unconnected matter and said that he would attend the parade on 11 September. On that date, he did not in fact attend.

12. On the 17 September 1997, the robbery alleged in count 4 occurred, while a further robbery alleged in count 5 took place on 24 October 1997.

13. An important part of the prosecution's case rested almost entirely on the ability of the witnesses to visually identify the perpetrator. For this reason, submitting the applicant to an identification parade was of great importance for the prosecution. Given the failure of the applicant to attend the arranged identification parades, the police decided to arrange a video identification parade. Permission to covertly video the applicant for identification purposes was sought from the Deputy Chief Constable for the West Midlands Police Force under the Home Office Guidelines on the Use of Equipment in Police Surveillance Operations 1984.

14. On 19 November 1997, the applicant was taken from Strangeways Prison (where he was being detained on another matter) to the Bilston Street police station. The prison, and the applicant, had been informed that this was for identification purposes and further interviews concerning the armed robberies. On arrival at the police station, he was asked to participate in an identification parade. He refused.

15. Meanwhile, on his arrival at the police station, he was filmed by the custody suite camera which was kept running at all times and was in an area through which police personnel and other suspects came and went. An engineer had adjusted the camera to ensure that it took clear pictures during his visit. A compilation tape was prepared in which eleven volunteers imitated the actions of the applicant as captured on the covert video. This video was shown to various witnesses of the armed robberies, of whom two positively identified the applicant as involved in the second and fourth robberies. Neither the applicant nor his solicitor were informed that a tape had been made or used for identification parade purposes or given an opportunity to view it prior to its use.

16. The applicant's trial commenced in January 1999.

17. At the outset, the applicant's counsel made an application pursuant to section 78 of the Police and Criminal Evidence Act 1984 that evidence of the video identification should not be admitted. The judge heard submissions from the prosecution and defence during a preliminary hearing ("*voir dire*") on 11 and 12 January 1999. On 14 January 1999, the trial judge ruled that the evidence should be admitted. When shortly afterwards this judge became unable to sit, the new trial judge heard the matter afresh. In his ruling of 26 February 1999, he found that the police had failed to comply with paragraphs D.2.11, D.2.15 and D.2.16 of the Code of Practice, *inter alia* with regard to their failure to ask the applicant for his consent to the video, to inform him of its creation, to inform him of its use in an identification parade, and of his own rights in that respect (namely, to give him an opportunity to view the video, object to its contents and to inform him of the right for his solicitor to be present when witnesses saw the videotape). However, the judge concluded that there had been no unfairness arising from the use of the video. Eleven persons had been filmed for comparison purposes rather than the required eight and were all within comparative height, age and appearance. Even though the applicant's solicitor was not present to verify the procedures adopted when the witnesses were shown the videos, the entire process had been recorded on video and this had been shown to the court which had the opportunity of seeing exactly how the entire video identification process had been operated. The judge ruled that the evidence was therefore admissible.

18. The trial lasted 17 days, the applicant and 31 witnesses giving live evidence. During the course of it, the applicant discharged all his legal representatives (leading and junior counsel and solicitors) and conducted his

own defence as he was dissatisfied with the way his defence was being conducted. In his summing-up to the jury, the trial judge warned the jury at considerable length about the “special need for caution” before convicting any defendant in a case turning partly on identification evidence and told the jury to ask themselves whether the video was a fair test of the ability of the witnesses to pick out their attacker, telling them that if it was not a fair test they should not give much, if any weight, to the identifications and also that if there was any possibility that the police planned a video identification rather than a live identification to put the applicant at a disadvantage, they could not rely safely on the video identification evidence. The jury were also made aware of the applicant's complaints about the honesty and fairness of his treatment by the police and the alleged breaches of the code.

19. On 17 March 1999, the jury convicted the applicant of three counts of robbery and acquitted him of two others. The judge sentenced him to five years' imprisonment.

20. The applicant applied for leave to appeal against conviction, *inter alia*, alleging that the trial judge had erred in not excluding the evidence obtained as a result of the covert identification video and that the conviction was unsafe due to significant and substantial breaches of the code of practice relating to identification parades. Leave was granted by a single judge of the Court of Appeal.

21. On 3 April 2000, after a hearing at which the applicant was represented by counsel, the Court of Appeal rejected his appeal, finding that the trial judge had dealt with the matter in a full and careful ruling, that he had been entitled to reach the conclusion that the evidence was admissible and that he had directed the jury to give the evidence little or no weight if it was in any way unfair. It refused leave to appeal to the House of Lords.

22. On 14 April 2000, the applicant applied to the House of Lords. It rejected the application. The solicitors claimed that they were informed on 7 July 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Home Office Guidelines

23. Guidelines on the use of equipment in police surveillance operations (the Home Office Guidelines of 1984) provide that only chief constables or assistant chief constables are entitled to give authority for the use of such devices. The Guidelines are available in the library of the House of Commons and are disclosed by the Home Office on application.

24. In each case, the authorising officer should satisfy himself that the following criteria are met: (a) the investigation concerns serious crime; (b) normal methods of investigation must have been tried and failed, or

must from the nature of things, be unlikely to succeed if tried; (c) there must be good reason to think that the use of the equipment would be likely to lead to an arrest and a conviction, or where appropriate, to the prevention of acts of terrorism and (d) the use of equipment must be operationally feasible. The authorising officer should also satisfy himself that the degree of intrusion into the privacy of those affected by the surveillance is commensurate with the seriousness of the offence.

B. The Police and Criminal Evidence Act 1984 ("PACE")

25. Section 78(1) of PACE provides as follows:

> "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

26. In *R. v. Khan* [1996] 3 All ER 289, the House of Lords held that the fact that evidence had been obtained in circumstances which amounted to a breach of the provisions of Article 8 of the Convention was relevant to, but not determinative of, the judge's discretion to admit or exclude such evidence under section 78 of PACE. The evidence obtained by attaching a listening device to a private house without the knowledge of the occupants in breach of Article 8 of the Convention was admitted in that case.

C. Code of Practice annexed to PACE

27. The Code of Practice was issued under sections 66-67 of PACE, laid before Parliament and then made a statutory instrument. It provided as relevant:

> "D:2.6
>
> The police may hold a parade other than an identification parade if the suspect refuses, or having agreed to attend, fails to attend an identification parade.
>
> D:2.10
>
> The identification officer may show a witness a video film of a suspect if the investigating officer considers, whether because of the refusal of the suspect to take part in an identification parade or group identification or other reasons, that this would in the circumstances be the most satisfactory course of action.
>
> D:2.11
>
> The suspect should be asked for his consent to a video identification and advised in accordance with paragraphs 2.15 and 2.16. However, where such consent is refused

the identification officer has the discretion to proceed with a video identification if it is practicable to do so.

D:2.12

A video identification must be carried out in accordance with Annex B. ...

D:2.15

Before a parade takes place or a group identification or video identification is arranged, the identification officer shall explain to the suspect:

(i) the purposes of the parade or group identification or video identification;

(ii) that he is entitled to free legal advice (see paragraph 6.5 of Code C);

(iii) the procedures for holding it (including the right to have a solicitor or friend present); ...

(vi) that he does not have to take part in a parade, or co-operate in a group identification, or with the making of a video film and, if it is proposed to hold a group identification or video identification, his entitlement to a parade if this can practicably be arranged;

(vii) if he does not consent to take part in a parade or co-operate in a group identification or with the making of a video film, his refusal may be given in evidence in any subsequent trial and police may proceed covertly without his consent or make other arrangements to test whether a witness identifies him; ...

D:2.16

This information must also be contained in a written notice which must be handed to the suspect. The identification officer shall give the suspect a reasonable opportunity to read the notice, after which he shall be asked to sign a second copy of the notice to indicate whether or not he is willing to take part in the parade or group identification or co-operate with the making of a video film. The signed copy shall be retained by the identification officer."

28. Annex B set out the details for arranging a video identification, including how, the number and appearance of participants etc.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The applicant complained that he was covertly videotaped by the police, invoking Article 8 of the Convention which 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."

A. The parties' submissions

1. The applicant

30. The applicant submitted that filming of him in the police station violated his right to respect for private life. He disputed that the custody area could be regarded as a public area or that the camera was running as a matter of routine. It had been run at a different speed to produce a sharper, clearer image of the applicant. He was only in the police station because he had been brought there by the police, and if anything persons in custody required greater protection than the public. He denied that he knew of the camera or that he was aware that he was being filmed. Even if he saw the camera, he could not have known that it was to be used unlawfully for identification purposes. Furthermore, the purpose of the recording was to obtain evidence to prosecute the applicant.

31. The applicant argued that the videotape was made in circumstances which breached the law deliberately from start to finish and could not be regarded as in accordance with law. The courts could not be regarded as a safeguard where they admitted such evidence in breach of the law and the Convention. The breaches were not procedural but had a substantive effect, for if the Code had been followed it was highly likely that the applicant would have received proper legal advice, agreed to a formal identification parade, would have objected to and asked for the replacement of unsuitable volunteers and may not have been identified. It could never, in his view, be legitimate for agents of the Government to deliberately and extensively breach the law.

32. The applicant submitted that the prosecution argued at trial and on appeal that the actions of the police were lawful because they had the authority of the Guidelines, not PACE. The Guidelines however, whatever the view of the domestic courts, were administrative and not primary legislation and could not supplant the specific procedures set down in PACE. The applicant accepted that PACE and the code satisfied the requirements of "law" under the second paragraph. Since however the trial court found three specific breaches of the applicable code (though the facts supported breaches of further provisions), the procedure adopted by the police could not be regarded as regular and authorised by PACE. In

particular, PACE could not be regarded as authorising the collection of footage without the suspect's knowledge where the rules had not been followed.

2. The Government

33. The Government submitted that the filming did not take place in a private place, or even in the police cells, with any intrusion into the "inner circle" of the applicant's private life. It was carried out in the custody suite of the police station which was a communal administrative area through which all suspects had to pass and where the closed circuit video camera, which was easily visible, was running as a matter of security routine. The images related to public, not private, matters. The applicant did not have a reasonable expectation of privacy in such an environment and had been informed that he was there for identification. Further, the applicant was not filmed for surveillance purposes but for identification purposes and only for use in the criminal proceedings in question akin to the cases of *Friedl v. Austria* (Commission report of 19 May 1994) and *Lupker and others v. the Netherlands* (Commission report of 7 December 1992). Nor could it be said that the footage was "processed": the section concerning the applicant was simply extracted and put with footage of the eleven volunteers and there was no public disclosure or broadcast of the images.

34. Even assuming an interference occurred, the Government submitted that it was in accordance with the law as the legal basis for the filming could be found in the statutory authority of the PACE Code of Practice, which was both legally binding and publicly accessible. The 1984 Guidelines were not the legal basis for the filming. The Code provided for a video identification procedure and the collection of footage without the suspect's knowledge if the suspect does not consent to take part in an identification parade. The fact that the Code was breached in three respects in the applicant's case however did not change its status as the basis for the compilation of the tape in domestic law and the domestic courts regarded the Code as sufficient legal basis for the compilation of the tape. The police obtained permission under the 1984 Guidelines as this dealt with the procedure for securing permission to obtain footage and the permitted mechanisms for obtaining it as distinct from the Code which provided the statutory authority for obtaining the footage.

35. The fact that there were breaches of the Code in this case was not determinative of whether there was a breach of Article 8 as it was the quality of the law that was important. The quality of the law was such as to provide sufficient safeguard against arbitrariness and abuse, the Code setting out procedures in very precise detail and the criminal courts having the power to exclude the resultant evidence under section 78 where necessary. Further, the breaches were not deliberate, and were breaches of procedure not substance, and the courts found no unfairness resulted.

Further, any interference pursued the legitimate aim of protecting public safety, preventing crime and protecting the rights of others and since the applicant had failed or refused to attend four identification parades could reasonably be considered as "necessary in a democratic society".

B. The Court's assessment

1. *The existence of an interference with private life*

36. Private life is a broad term not susceptible to exhaustive definition. Aspects such as gender identification, name, sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. The Article also protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (*P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 56, ECHR 2001-IX, with further references).

37. It cannot therefore be excluded that a person's private life may be concerned in measures effected outside a person's home or private premises. A person's reasonable expectations as to privacy is a significant though not necessarily conclusive factor (*P.G. and J.H v. United Kingdom*, § 57).

38. The monitoring of the actions of an individual in a public place by the use of photographic equipment which does not record the visual data does not, as such, give rise to an interference with the individual's private life (see, for example, *Herbecq and Another v. Belgium*, applications nos. 32200/96 and 32201/96, Commission decision of 14 January 1998, DR 92-A, p. 92). On the other hand, the recording of the data and the systematic or permanent nature of the record may give rise to such considerations (see, for example, *Rotaru v. Romania* [GC], no. 28341/95, §§ 43-44, ECHR 2000-V, and *Amann v. Switzerland* [GC], no. 27798/95, §§ 65-67, ECHR 2000-II, where the compilation of data by security services on particular individuals even without the use of covert surveillance methods constituted an interference with the applicants' private lives). While the permanent recording of the voices of *P.G.* and *J.H.* was made while they answered questions in a public area of a police station as police officers listened to them, the recording of their voices for further analysis was regarded as the processing of personal data about them amounting to an interference with their right to respect for their private lives (the above-cited *P.G. and J.H.* judgment, at §§ 59-60). Publication of the material in a manner or degree beyond that normally foreseeable may also bring security recordings within the scope of Article 8 § 1. In *Peck v. the United Kingdom* (no. 44647/98, judgment of 28 January 2003, ECHR 2003-...), the

disclosure to the media for broadcast use of video footage of the applicant whose suicide attempt was caught on close circuit television cameras was found to be a serious interference with the applicant's private life, notwithstanding that he was in a public place at the time.

39. In the present case, the applicant was filmed on video in the custody suite of a police station. The Government argued that this could not be regarded as a private place, and that as the cameras which were running for security purposes were visible to the applicant he must have realised that he was being filmed, with no reasonable expectation of privacy in the circumstances.

40. As stated above, the normal use of security cameras *per se* whether in the public street or on premises, such as shopping centres or police stations where they serve a legitimate and foreseeable purpose, do not raise issues under Article 8 § 1 of the Convention. Here, however, the police regulated the security camera so that it could take clear footage of the applicant in the custody suite and inserted it in a montage of film of other persons to show to witnesses for the purposes of seeing whether they identified the applicant as the perpetrator of the robberies under investigation. The video was also shown during the applicant's trial in a public court room. The question is whether this use of the camera and footage constituted a processing or use of personal data of a nature to constitute an interference with respect for private life.

41. The Court recalls that the applicant had been brought to the police station to attend an identity parade and that he had refused to participate. Whether or not he was aware of the security cameras running in the custody suite, there is no indication that the applicant had any expectation that footage was being taken of him within the police station for use in a video identification procedure and, potentially, as evidence prejudicial to his defence at trial. This ploy adopted by the police went beyond the normal or expected use of this type of camera, as indeed is demonstrated by the fact that the police were required to obtain permission and an engineer had to adjust the camera. The permanent recording of the footage and its inclusion in a montage for further use may therefore be regarded as the processing or collecting of personal data about the applicant.

42. The Government argued that the use of the footage was analogous to the use of photos in identification albums, in which circumstance the Commission had stated that no issue arose where they were used solely for the purpose of identifying offenders in criminal proceedings (*Lupker v. the Netherlands*, no. 18395/91, Commission decision of 7 December 1992, unreported). However, the Commission emphasised in that case that the photographs had not come into the possession of the police through any invasion of privacy, the photographs having been submitted voluntarily to the authorities in passport applications or having been taken by the police on the occasion of a previous arrest. The footage in question in the present

case had not been obtained voluntarily or in circumstances where it could be reasonably anticipated that it would be recorded and used for identification purposes.

43. The Court considers therefore that the recording and use of the video footage of the applicant in this case discloses an interference with his right to respect for private life.

2. The justification for the interference with private life

44. The Court will accordingly examine whether the interference in the present case is justified under Article 8 § 2, notably whether it was "in accordance with the law".

45. The expression "in accordance with the law" requires, firstly, that the impugned measure should have some basis in domestic law; secondly, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and that it is compatible with the rule of law (see, amongst other authorities, *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports* 1998-II, p. 540, § 55). It also requires that the measure under examination comply with the requirements laid down by the domestic law providing for the interference.

46. The Government's observations focus on the existence and quality of the domestic law authorising the taking of video film of suspects for identification purposes, submitting that an adequate basis for the measure existed in the provisions of PACE and its Code which set out detailed procedures and safeguards. While the police were required to obtain authorisation under the Home Office Guidelines (a form of instruction found in previous cases not to satisfy requirements of foreseeability and accessibility), they sought to distinguish the procedure for the police to obtain consent to use the camera as such from the statutory authority for the taking and use of the film.

47. Noting that the applicant agreed that PACE and its Code furnished a legal basis for the measure in his case, the Court considers that the taking and use of video footage for identification had sufficient basis in domestic law and was of the requisite quality to satisfy the two-prong test set out above. That is not however the end of the matter. As pointed out by the applicant, the trial court, with which the appeal court agreed, found that the police had failed to comply with the procedures set out in the applicable code in at least three respects. The judge found shortcomings as regarded police compliance with paragraphs D.2.11, D.2.15 and D.2.16 of the Code of Practice (see paragraph 17 above), which concerned, significantly, their failure to ask the applicant for his consent to the video, to inform him of its creation and use in an identification parade, and of his own rights in that respect (namely, to give him an opportunity to view the video, object to its contents and to inform him of the right for his solicitor to be present when

witnesses saw the videotape). In light of these findings by domestic courts, the Court cannot but conclude that the measure as carried out in the applicant's case did not comply with the requirements of domestic law.

48. Though the Government have argued that it was the quality of the law that was important and that the trial judge ruled that it was not unfair for the videotape to be used in the trial, the Court would note that the safeguards relied on by the Government as demonstrating the requisite statutory protection were, in the circumstances, flouted by the police. Issues relating to the fairness of the use of the evidence in the trial must also be distinguished from the question of lawfulness of the interference with private life and are relevant rather to Article 6 than to Article 8. It recalls in this context its decision on admissibility of 26 September 2002 in which it rejected the applicant's complaints under Article 6, observing that the obtaining of the film in this case was a matter which called into play the Contracting State's responsibility under Article 8 to secure the right to respect for private life in due form.

49. The interference was not therefore "in accordance with the law" as required by the second paragraph of Article 8 and there has been a violation of this provision. In these circumstances, an examination of the necessity of the interference is not required.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

51. The applicant argued that an award of non-pecuniary damage should be made to reflect the deliberate flouting of national and Convention law by the way in which the applicant was misled and covertly filmed to obtain evidence for use at trial. Such an award was necessary, in his view, to enforce respect of citizens' rights. It should also be greater than that made in *P.G. and J.H. v. the United Kingdom*, where no real argument was made regarding the amount of damages. He emphasised that in his case his treatment has contributed greatly to his sense of insecurity and problems of accepting the good faith of public authorities. He also was deprived of his liberty throughout the criminal trial, suffered two trials and an appeal hearing, and as a result lost earnings, job opportunities and humiliation of a trial which should never have taken place due to blatant breaches in the

obtaining of evidence. He proposed, by analogy with malicious prosecution and misfeasance in a public office awards in domestic cases, an award of 10,000 pounds sterling (GBP).

52. The Government pointed out that the applicant's complaints under Article 6 had been rejected as inadmissible and claims relating to his trial and detention could not be made. There was no convincing distinction between his case and *P.G. and J.H.* and the comparisons made with domestic awards were irrelevant, *inter alia*, since the torts were very different from the elements in issue under Article 8.

53. The Court agrees with the Government that domestic scales of damages in relation to torts, not relevant, to the facts of this case are of little assistance. Considering nonetheless that the applicant must be regarded as having suffered some feelings of frustration and invasion of privacy by the police action in this case, it awards, for non-pecuniary damage, the sum of 1,500 euros (EUR).

B. Costs and expenses

54. The applicant claimed legal costs and expenses of a total of GBP 8,299.41, inclusive of value-added tax (VAT), consisting of GBP 3,841.29 for his solicitor and GBP 4,458.12 for counsel

55. The Government considered that the applicant's claims for legal costs and expenses were on the high side for an application that did not go beyond the written stage. They considered a figure of GBP 4,000 would be reasonable.

56. Taking into account the fact that the applicant's complaints were only declared partly admissible and the amount of legal aid paid by the Council of Europe, the Court makes an award of EUR 9,500, inclusive of VAT.

C. Default interest

57. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, to be converted into pounds sterling at the rate applicable at the date of settlement;
(i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
(ii) EUR 9,500 (nine thousand five hundred euros) in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Georg RESS
President