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The Registrar
European Court of Human Rights
Council of Europe
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FRANCE

6th August 2020

Dear Sir/Madam,

Nealon and Hallam v United Kingdom (Application n^{os} 32483/19 and 35049/19) – First Section

JUSTICE seeks leave from the Court under Rule 44(3)(a) to intervene in the public interest in the above cases before the First Section of the Court. Founded in 1957, JUSTICE is an independent all-party law reform and human rights non-governmental organisation based in the UK. It is a registered charity and the British section of the International Commission of Jurists.

JUSTICE's predominant focus for a significant period of its existence was investigation of miscarriage of justice, at its height receiving around 300 applications for assistance each year. JUSTICE's reports *Miscarriage of Justice* (1989), *Remedying Miscarriages of Justice* (1994) and *Righting Miscarriages of Justice? Ten years of the Criminal Cases Review Commission* (2008) highlighted the flaws in the review process, along with many others over the years that have made recommendations to prevent miscarriage of justice, not least its working party report *Mental Health and Fair Trial* (2017).

JUSTICE's work securing the quashing of convictions demonstrated the difficulties faced for victims of miscarriage of justice upon release from prison. In its report *Compensation for Miscarriage of Justice* (1982) it set out the deficiencies in the system at the time. JUSTICE recently published a further report *Supporting Exonerees: Ensuring accessible, consistent and continuing support* (2018). The report records the hardship, difficulty in adjustment and trauma that victims of miscarriage of justice still face, and which can continue for years after their release.

Against this backdrop, compensation for miscarriage of justice goes some way to acknowledge the wrong that has been caused and support victims to begin their lives again. As recommended in *Supporting Exonerees*, JUSTICE considers that anyone who has suffered wrongful imprisonment should be entitled to compensation, unless it can be shown that they contributed to the withholding of the new fact, the conviction was quashed on a mere technicality and/or a retrial was ordered at which the person was convicted.

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President of Council **Baroness Kennedy of The Shaws QC** Director **Andrea Coomber**

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JUSTICE also has a history of intervening in cases involving important matters of public interest, especially those concerning the protection of fundamental rights. JUSTICE intervened in this case in the UK Supreme Court (“UKSC”) and the previous compensation for miscarriage of justice case to come before the UKSC *R (Adams) v Secretary of State for Justice* [2012] I AC 48, also considered by the European Court of Human Rights in *Allen v UK* [2016] 63 EHRR; App. No. 25424/09 (12th July 2013) (Grand Chamber.)

These appeals raise the important question of whether the amended test for miscarriage of justice set out in s. 133 Criminal Justice Act 1988 (“CJA”) violates the presumption of innocence protected by Article 6(2) ECHR. In order to be eligible for compensation, section 133(1ZA) requires a new or newly discovered fact to show beyond reasonable doubt that the person did not commit the offence.

This case has far reaching implications. The availability of compensation to those who have suffered miscarriage of justice is critical to rebuilding a life significantly deteriorated by years spent wrongly incarcerated. A test limited to proof of innocence is almost impossible to meet, as well as violating the presumption to which the applicant is entitled.

The UKSC in the decision below rejected the application of the presumption of innocence in the context of the s. 133 CJA amended test. It found by a majority that the test merely applied to the application process, not an applicant’s general entitlement to be considered innocent. The UKSC Justices were also very critical of this Court’s expansion of the presumption of innocence into this arena and invited the Court to clarify its approach.

In light of the Supreme Court ruling, JUSTICE seeks leave to intervene to assist the Court with written submissions concerning:

- (i) The development of the presumption of innocence to protect applicants seeking support from compensation schemes in similarly placed international instruments and common law jurisdictions;
- (ii) The impact upon people whose convictions have been quashed of compensation schemes that undermine their status as innocent in law;
- (iii) The approaches taken by other Contracting Parties (including of Scotland) to the provision of compensation, in light of this Court’s careful guidance to ensure schemes do not violate the presumption of innocence.

If granted leave to intervene, JUSTICE does not propose to address any other aspect of the case, nor would we seek to address the facts or merits of the applicants’ complaints.

Thank you for considering this application.

Yours faithfully,

Jodie Blackstock
Legal Director
JUSTICE

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