

Court of Appeal

## **Berry Trade Ltd and Another**

**v.**

## **Moussavi and Others**

Before Lord Justice Potter, Lord Justice Mummery and Lady Justice Arden.

Judgment March 21 2002.

*Legal Aid - committal to prison - defendant entitled to public funding to instruct lawyers - Croissant v Germany (1992) 16 EHRR 135 - European Convention on Human Rights Article 6.3(c)*

### **Right to seek public funding**

A litigant who wished to instruct counsel and solicitors to defend an application to commit him to prison but had insufficient means, had a right to apply for public funding which should be respected by the court.

The litigant ought to be given an effective right to apply for public funding which outweighed other considerations.

The Court of Appeal so held, allowing an appeal by Kaveh Moussavi against the refusal of Mr Justice Toulson to grant a further adjournment of committal proceedings on the application of the claimants, Berry Trade Ltd and Vitol Energy (Bermuda) Ltd for alleged breaches of worldwide search and seizure orders made by Mr Justice Laddie on July 29, 2001 in commercial litigation.

When the funds he had provided were exhausted, Mr Moussavi's solicitors came off the record. His application for public funding was refused.

After he was adjudicated bankrupt he applied again. He was refused again, but the matter remained under consideration within the Legal Services Commission.

Since the committal proceedings had been adjourned several times because Mr Moussavi was unrepresented, the claimants' solicitors offered to pay for Mr Moussavi's representation by his own chosen solicitors and counsel so the committal proceedings could be heard.

Mr Moussavi refused that offer. The judge refused a further adjournment of the committal. Mr Moussavi appealed.

Mr Moussavi in person. Mr Ian Croxford QC and Mr Philip Marshall for the claimants. Mr Andrew Bodnar at the invitation of the court.

LADY JUSTICE ARDEN said that the question which had concerned the judge was whether it would be proper for counsel and solicitors to act for Mr Moussavi funded by the claimants' solicitors.

The judge should have asked whether Mr Moussavi had had an effective opportunity for applying for legal assistance. The weight to be accorded to giving him that opportunity had to outweigh all other considerations such as the inconvenience to other parties and the use of court resources. Mr Moussavi had not had that opportunity.

That conclusion was consistent with the European Convention on Human Rights as scheduled to the Human Rights Act 1998.

A committal application was a criminal proceeding for Convention purposes. Mr Moussavi had a right to represent himself or to be represented and, if he had insufficient means, to free legal representation if the interests of justice so required.

The court should pay heed to the accused's view as to his representation: see *Croissant v Germany* (Application No 13611/88) (1992) 16 EHRR 135).

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By analogy to deprive someone of his right to apply for legal aid against his wishes ran counter to the notion of fair trial under article 6 if it lacked justification. The right to legal representation of a defendant's choice was not absolute: see article 6.3(c) and *Croissant*.

It was appropriate to substitute a period of adjournment to pursue the application to the Legal Services Commission after which, if such funding had not been obtained, the court would have to consider whether it was proper to continue in the absence of legal representation for Mr Moussavi.

By then his rights would have been respected and the interests of other parties should be given greater weight.

Lord Justice Mummery agreed and Lord Justice Potter delivered a concurring judgment.

Solicitors: Ince & Co.

*10/04/2002 Times Law Reports*