

KARAGOZLU v COMMISSIONER OF POLICE OF THE METROPOLIS
[2006] EWCA Civ 1691

Court of Appeal, Sir Anthony Clarke MR, Scott Baker and Thomas LJ

Colin Challenger appeared for the appellant in this important human rights appeal. The Master of the Rolls held that where a serving prisoner suffers loss of certain privileges by reason of misfeasance in public office committed by a police officer, the requirement in this tort that special or material damage be proved is made out and so an action will lie. The claimant's appeal against the striking out of his claim for damages against the Commissioner of Police of the Metropolis was therefore allowed.

Sir Anthony Clarke MR said that the claimant had been sentenced to nine and a half years imprisonment for VAT fraud. Originally he was a category B prisoner but by the date of conviction he was re-classified D and moved to an open prison. Shortly after conviction he was returned without satisfactory explanation to closed prison. His claim asserted that this resulted from a false and malicious allegation made against him to the prison authorities by police. He had brought judicial review proceedings which were compromised. But in the meantime he suffered a protracted period in closed prison for which he sought damages for misfeasance.

Originally his claim was against both the Home Office (in its capacity as prisons' authority) and the Commissioner. Both defendants pursued an application to strike out the claim upon the ground that a serving prisoner had no right to be detained in a prison of a particular category. It was also asserted that he could not allege that he had suffered material damage if re-classified to a harsher regime. The claimant appealed against the striking out of his claim against the Commissioner. By the date of his appeal to the CA the case of *Watkins v Secretary of State for the Home Department* [2006] 2 WLR 807 had been decided in the House of Lords. That decision seemed to leave equivocal whether loss of residual liberty by a serving prisoner might sound in the appropriate type of damage for the purpose of a claim in misfeasance. The Court of Appeal concluded that loss of liberty (or in the case of a serving prisoner, loss of his residual liberty) constituted breach of a fundamental right for which general damages are recoverable. Such damage is akin to generals for personal injury. It is material damage for the purpose of a claim in misfeasance.