



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

COURT (CHAMBER)

CASE OF STANFORD v. THE UNITED KINGDOM

(Application no. 16757/90)

JUDGMENT

STRASBOURG

23 February 1994

In the case of Stanford v. the United Kingdom*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, President,

Mr Thór VILHJÁLMSSON,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr J. DE MEYER,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

and also of Mr M.-A. EISSEN, Registrar, and Mr H. PETZOLD, Deputy Registrar,

Having deliberated in private on 29 October 1993 and 25 January 1994,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 December 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 16757/90) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) on 8 January 1990 by a British citizen, Mr Bryan Stanford.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

* Note by the Registrar : The case is numbered 50/1992/395/473. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 January 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr L.-E. Pettiti, Mr J. De Meyer, Mr R. Pekkanen, Mr J. Makarczyk and Mr D. Gotchev (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, through the Registrar, consulted the Agent of the Government of the United Kingdom ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received on 29 June 1993 the Government's memorial and, on 22 July, the applicant's. On 21 October 1993 the applicant's submissions on Article 50 (art. 50) were received.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 October 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr I. CHRISTIE, Foreign and Commonwealth Office,

Agent,

Mr P. HAVERS, Barrister-at-law,

Counsel,

Mr J. WATHERSTON, Lord Chancellor's Department,

Ms A. JENKINS, Lord Chancellor's Department,

Advisers;

- for the Commission

Mr F. MARTINEZ,

Delegate;

- for the applicant

Mr M. CLARE,

Counsel,

Mr G. PLATT, Solicitor.

The Court heard addresses by Mr Martinez, Mr Clare and Mr Havers as well as replies to its questions.

6. On 3 November 1993 the Government submitted their reply to the applicant's Article 50 (art. 50) submissions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 30 March 1988 the applicant, Mr Bryan Stanford, was committed for trial by jury at the Crown Court in Norwich on seven counts arising out of his relationship with a young girl: indecent assault, two counts of rape, unlawful sexual intercourse, kidnapping and two counts of making a threat to kill. The trial, before a High Court judge and a jury, lasted six working days between 8 June and 15 June 1988. Throughout the trial the applicant, who sat in a glass-fronted dock, was represented by solicitor and counsel. His counsel had been in practice for thirteen years and specialised in criminal work.

8. On 15 June 1988, having been found guilty of indecent assault, one count of rape, kidnapping and one count of making a threat to kill, the applicant was sentenced to a total of ten years imprisonment. He is currently serving this sentence in Her Majesty's Prison Long Lartin, in Worcestershire.

9. During the trial evidence was given by, among others, Miss M., the alleged victim of the offences who was then fifteen years of age, as well as her mother and sister. When M. gave evidence the judge directed that she be moved nearer to himself and the jury since it was difficult to hear what she was saying.

10. On 27 July 1988 the applicant sought leave to appeal against his conviction to a single judge of the Court of Appeal (Criminal Division) ("the Court of Appeal") on the ground, inter alia, that at his trial he could not hear the proceedings. This was refused on 13 September 1988 as there was found to be no merit in any of his proposed grounds.

11. On 6 October 1988 the applicant renewed his application for leave to appeal to a full court of the Court of Appeal. He claimed, inter alia, that he had been unable to hear the original proceedings as the acoustics in the court had been inadequate. He also submitted a letter in which the prison officer who had guarded him in the dock during the trial confirmed that the applicant had on a number of occasions complained to him of his inability to hear the witnesses. The letter stated inter alia:

"On at least three occasions I called his solicitor and he was told the problem. On one of these occasions he told the [applicant] not to worry as his barrister was doing a good job. I have to say that I could not hear what the witnesses were saying."

12. It is not disputed that the applicant was unable to hear some of the evidence nor that this was communicated to his solicitor, counsel and the prison officer guarding him. The trial transcript reveals that the applicant

was, however, able to hear the indictment read out at the beginning of the trial and pleaded "not guilty" to each of the seven counts put to him.

At no time during the trial was any complaint or representation made to the court or to any of its officials by the applicant or his lawyers concerning the claim that he could not hear the proceedings.

13. The applicant complained to the Solicitors' Complaints Bureau about, *inter alia*, the solicitor's failure to take action in respect of his difficulties in hearing the evidence. In a letter dated 19 December 1988 to the Bureau, the applicant's solicitor commented as follows on the applicant's claims:

"Mr Stanford's trial was apparently the first case to be heard at the new Norwich Crown Court building. Throughout the trial Mr Stanford sat silently in the dock. He told me that he is someone who has a hearing problem. I assume that his failure to hear what was said relates mainly to the evidence given against him by the complainant (M.). The prosecution allegation was that Mr Stanford had abused, raped, kidnapped and threatened to kill [the complainant] and that this conduct had been going on for about two years. She claimed to have told no one because of her fear of violence from Mr Stanford and because of threats he allegedly made to harm her and her family. She spoke in a soft voice and the judge directed that she should give her evidence sitting at a table positioned between counsel and the judge. This meant that she was closer to the jury and her upper body was therefore visible to the jury rather than obscured by the witness box. Notwithstanding this she gave her evidence with her head bowed answering questions often with one word answers in a soft voice. I was nearer to her than the defendant. I could hear what she was saying. It is clear that the jury, the judge and counsel could also hear. Because of the court layout it would have been difficult for the defendant to have heard but not impossible if his hearing had been unimpaired. I had taken full instructions from Mr Stanford upon the committal papers in the form of a 22 page statement. Counsel was in my view very well acquainted with the detail of that statement and put to the complainant all matters which should have been put. I agree that Mr Stanford told me and counsel that he could not hear everything that was being said. Counsel took the view (which I shared) that as she and the jury could hear and as she would no doubt have had the opportunity of taking instructions upon any matters arising which were not contained in her brief, then there was nothing which needed to be done. It is my view that if Mr Stanford had been placed close to the complainant and facing her at the time that she was giving her evidence, then this would have been viewed by the jury as an indication of the intimidating behaviour of Mr Stanford about which [M.] was complaining."

14. On 6 October 1989 the full Court of Appeal refused the applicant's renewed application for leave to appeal against conviction.

It held, *inter alia*, as follows:

"We have read the grounds of appeal against conviction upon which he would seek to rely. There is no substance in any one of them. We make reference specifically to one, however, because his complaint is that he did not receive a fair trial on account, so he puts it, of 'poor acoustics' which prevented him from hearing the proceedings and the failure of his representative, that is to say his solicitor, to remedy that. We have seen a letter from a prison officer relating to this matter. There would appear to be something in the complaint of the applicant, namely that he could not hear properly at all times what was going on. There is no doubt in our minds, however, that his

solicitor and his counsel had not the slightest difficulty in following the proceedings and in representing him in a way which could not possibly be complained about."

15. On 10 November 1989, the applicant was informed by the Registrar of Criminal Appeals that he could not appeal to the House of Lords, since he had not had a substantive appeal dismissed by the Court of Appeal.

16. A similar complaint concerning acoustics in the courtroom in which the applicant had been tried, and which was in constant use from the time of its opening in 1988, was made in one other case over a year after the applicant's conviction. As a result, the landlords of the court building commissioned a report from a company specialising in acoustics. This report, dated 8 February 1990, noted that in 1988, before the building came into use as a court, tests showed that acoustic design targets had been met. It concluded that a person speaking from the Bench was intelligible in the front seat of the dock with the glass screen in position. The report also stated that the effect of the glass screens upon audibility was not considered to involve a significant drop in sound level.

Notwithstanding these findings, it was subsequently decided to instal a reflector panel above the dock to overcome the very small sound loss which was due to the glass screen.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. In England and Wales, the right of an accused to be present in court at his trial is a matter of common law. The general rule was stated by Lord Reading CJ in *R. v. Lee Kun* (1916) 1 Kings Bench Reports 337, at 341, as follows:

"There must be very exceptional circumstances to justify proceeding with the trial in the absence of the accused. The reason why the accused should be present at the trial is that he may hear the case made against him and have the opportunity ... of answering it. The presence of the accused means not only that he must be physically in attendance, but also that he must be capable of understanding the nature of the proceedings."

18. A trial judge may, if he considers that the accused in the dock may intimidate a witness, remove the accused from the presence of the witness, though not out of hearing (*R. v. Smellie* (1919) 14 Criminal Appeal Reports 128).

PROCEEDINGS BEFORE THE COMMISSION

19. The applicant lodged his application (no. 16757/90) with the Commission on 8 January 1990. He complained under Article 6 para. 1 (art.

6-1) of the Convention that as he could not hear the proceedings which resulted in his conviction he did not receive a fair trial.

20. On 10 February 1992 the Commission declared the applicant's complaint admissible. In its report of 21 October 1992 drawn up under Article 31 (art. 31), it expressed the opinion that there had been no violation of Article 6 para. 1 (art. 6-1) (eleven votes to seven). The full text of the Commission's opinion and of the two dissenting opinions contained in the report are reproduced as an annex to this judgment*.

AS TO THE LAW

21. The applicant complained that he did not receive a fair trial since he was unable to hear the proceedings. He relied on Article 6 para. 1 (art. 6-1) of the Convention which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

22. The applicant stated that as a result of not being able to hear the proceedings he was not a fully informed party to counsel's decisions on the conduct of his case and was deprived of the opportunity of checking for himself which matters of evidence were consistent or inconsistent with the written statements against him. By complaining to the prison officer who was guarding him in the dock, as well as to his lawyers, he had done all that could have been expected of him to notify the court. He maintained that he did not agree with the decision of his lawyers not to make a representation to the trial judge.

He further submitted that the responsibility of the respondent Government was engaged since it was the poor acoustics of the courtroom which were the primary cause of his difficulties in hearing the proceedings. This was borne out by the decision to instal a reflector panel above the dock to increase audibility (see paragraph 16 above).

23. The Government, on the other hand, pointed out that the acoustics of the courtroom were tested both before the court was opened and in 1990, subsequent to the applicant's complaint. On both occasions they were found to be satisfactory.

In their view, as well as that of the Commission, the responsibility of the Government was not otherwise engaged since neither the applicant nor his lawyers complained or made any representation to the court about the applicant's hearing difficulties. Moreover, this was a deliberate and tactical

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 282-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

decision by counsel with which the applicant could be taken to have agreed. Nothing therefore occurred during the course of the trial which would have put the judge on notice of this problem.

24. The Court must consider the proceedings as a whole including the decisions of the appellate courts. Its task is to ascertain whether the proceedings in their entirety, as well as the way in which evidence was taken, were fair (see, *inter alia*, the *Edwards v. the United Kingdom* judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, para. 34).

25. It recalls that it is not in dispute between those appearing before the Court that the applicant had difficulties in hearing some of the evidence given during the trial.

26. Nor is it in dispute that Article 6 (art. 6), read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. In general this includes, *inter alia*, not only his right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6 (art. 6-3-c, art. 6-3-d, art. 6-3-e), - "to defend himself in person", "to examine or have examined witnesses", and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court" (see, *inter alia*, the *Colozza v. Italy* judgment of 12 February 1985, Series A no. 89, p. 14, para. 27, and the *Barberà, Messegué and Jabardo v. Spain* judgment of 6 December 1988, Series A no. 146, p. 33, para. 78).

27. In the present case neither the applicant nor the legal representatives sought to bring his hearing difficulties to the attention of the trial judge at any stage throughout the six-day hearing. It is true that the applicant mentioned these problems to a prison officer and subsequently to his lawyers (see paragraphs 11 and 12 above). However, the officer was neither a court official nor an officer of the court. Moreover, counsel, who had lengthy experience in handling criminal cases, chose for tactical reasons to remain silent about the difficulties (see paragraphs 11 and 13 above) and there was nothing to indicate that, as subsequently claimed, the applicant disagreed with this decision.

28. The State cannot normally be held responsible for the actions or decisions of an accused's lawyer. It follows from the independence of the legal profession that the conduct of the defence is essentially a matter between the defendant and his representatives. The Contracting States are required to intervene only if a failure by counsel to provide effective representation is manifest or sufficiently brought to their attention (see, as the most recent authority, *mutatis mutandis*, the *Imbrioscia v. Switzerland* judgment of 24 November 1993, Series A no. 275, p. 14, para. 41).

This was not, however, the position in the present case (see paragraph 27 above).

29. The applicant further maintained that the Government bore responsibility for the poor acoustics of the courtroom. While this is undoubtedly a matter which could give rise to an issue under Article 6 (art. 6) of the Convention, the expert reports which were carried out both before and after the applicant's complaint indicated that, apart from a minimal loss of sound due to the glass screen, the acoustic levels in the courtroom were satisfactory (see paragraph 16 above).

30. Finally it must be recalled that the applicant was represented by a solicitor and counsel who had no difficulty in following the proceedings and who would have had every opportunity to discuss with the applicant any points that arose out of the evidence which did not already appear in the witness statements. Moreover a reading of the transcript of the trial reveals that he was ably defended by his counsel and that the trial judge's summing up to the jury fairly and thoroughly reflected the evidence presented to the court.

31. In addition, the Court of Appeal, which had been seised of the matter (see paragraph 14 above), could not reasonably have been expected in the circumstances to correct an alleged shortcoming in the trial proceedings which had not been raised before the trial judge (see, in this respect, the above-mentioned Edwards judgment, Series A no. 247-B, p. 35, para. 39, and the authorities cited therein).

32. In light of the above the Court concludes that there had been no failure by the United Kingdom to ensure that the applicant received a fair trial. There has thus been no breach of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 (art. 6).

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 February 1994.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar