



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

SECOND SECTION

CASE OF FOLEY v. THE UNITED KINGDOM

(Application no. 39197/98)

JUDGMENT

STRASBOURG

22 October 2002

FINAL

22/01/2003

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 Foley v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 September 2001 and 1 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 39197/98) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Patrick Grattan Foley (“the applicant”), on 12 August 1997.

2. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley, Foreign and Commonwealth Office.

3. The applicant alleged, in particular, that civil proceedings brought by him were not determined within a reasonable time.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was originally allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court), which, on 11 September 2001, declared the application partially admissible and decided to dispense with a hearing (Rule 59 § 2 *in fine*).

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1924 and lives in Stratford-on-Avon.

8. The facts of the case, as submitted by the parties, may be summarised as follows.

9. The applicant was an inventor and entered into an agreement with Ferranti plc whereby the latter would have exclusive rights to develop, design, manufacture and sell gaming machines based on the applicant's ideas. The applicant also set up a company ("Transworld") which entered into an agreement with Ferranti Instrumentation Limited relating to the marketing of the machines. The venture was not a commercial success and in June 1982 the agreements were repudiated by the respective Ferranti companies.

10. On 4 July 1984 the applicant issued a writ in his own name and in that of Transworld (together, "the plaintiffs") against the two Ferranti companies (together, "the defendants"). It was served on 5 July 1984. The defendants were granted one extension of time for service of the Defence with the plaintiffs' consent and then applied to the court for a further extension. On 3 October 1984, before that application could be heard, judgment in default of defence was entered for the plaintiffs. That judgment was set aside on 12 December 1984 and the Defence was served on 20 December 1984. The defendants served a request for Further and Better Particulars of the plaintiffs' Statement of Claim on the same date. The plaintiffs failed to reply within the fourteen-day deadline, leading the defendants to apply to the court which, on 21 March 1985, ordered that the plaintiffs reply within 42 days.

11. The defendants applied for security for their costs, and the court granted the application on 26 September 1985 by ordering the plaintiffs to pay a sum reflecting the defendants' likely costs up until the date for exchange of evidence. The proceedings were stayed until the security was paid.

12. On 3 October 1985 the plaintiffs appealed against the order. A hearing was listed for later that month but was postponed, according to the applicant due to a series of errors by the court registry.

13. The appeal was dismissed on 31 January 1986 and the plaintiffs paid the security on 28 February 1986.

14. On 2 August 1985 the plaintiffs served a request for Further and Better Particulars of the Defence. On 8 July 1986, once the stay imposed in September 1985 had been lifted by payment of the security, an order was made by consent of the parties.

15. On 21 May 1987 the defendants applied for an order that the plaintiffs fulfil their discovery obligations by serving a list of documents. The deadline for service of the list had expired on 3 January 1985. The order was made on 30 June 1987.

16. The plaintiffs' solicitors filed a Notice of Intention to Proceed on 5 January 1989 as required by the rules of court since no steps had been taken in the prosecution of the claim for more than a year. On 10 February 1989 the plaintiffs served a Summons for Directions, the deadline for which had expired on 2 February 1985.

17. On 27 February 1989 the plaintiffs made an application for specific discovery and the defendants made a further application for security for costs. These, together with the Summons for Directions, came before the District Registrar on 7 April 1989 but were adjourned. According to the applicant, this adjournment was due to failure by the court registry properly to notify the defendants' counsel of the hearing date. The Government state that it was due to the parties not having ensured that sufficient court time would be available. A further hearing was proposed for 1 September 1989 but was also adjourned. At a hearing on 25 October 1989 the District Registrar decided to adjourn in order to refer the matters before him to the High Court, which held hearings on 15, 17 and 24 January 1990. The application for security for costs was dismissed.

18. On 12 February 1990 an Order for Directions was made by consent of all the parties, who indicated that they would not be prepared for trial before 1 October 1990. The trial was listed for 4 June 1991.

19. The defendants made a payment into court of GBP 50,000 on 1 November 1990, and a second payment of GBP 50,000 on 10 April 1991. These payments failed to procure a settlement and the trial began on schedule, but had to be adjourned on 18 June 1991 as the applicant was ill. It was recommenced on 29 April 1992 and ran until 11 June 1992. On 2 October 1992, judgment was given in the plaintiffs' favour. However, the damages award was limited to GBP 5 to each plaintiff since they could not establish that the venture would have been a commercial success had it proceeded.

20. The plaintiffs appealed in December 1992. The plaintiffs were required, *inter alia*, to lodge a transcript of the material evidence given at trial by 1 March 1993, but failed to do so until 28 February 1994 due to delays in production of the transcripts by a company of court reporters.

21. In the meantime, the defendants applied for security for costs for the appeal. A hearing on the application took place on 29 March 1993. Judgment on the application was reserved, but in the event no decision was

required since Ferranti plc were put into receivership in December 1993. The receivers took over conduct of Ferranti plc's role in the case thereafter. Ferranti Instrumentation Limited had stopped trading and ceased to exist altogether in November 1996

22. On 21 March 1994, the Court of Appeal allocated a hearing date of 5 or 6 December 1994 for the appeal. However, in light of the uncertainties associated with Ferranti's receivership, the appeal was stood out of the list by consent until 31 March 1995.

23. After that date the Civil Appeals Office ("CAO") made a number of attempts to confirm whether or not the plaintiffs would be pursuing the appeal. On 18 June 1996 the applicant informed the CAO that he would be proceeding in person. On 2 October 1996 the applicant telephoned the CAO to enquire about hearing dates but was told that his files could not be found at that time. His request for a hearing date was passed to the Court of Appeal's Registrar on 14 November 1996 and on 6 March 1997 the Registrar directed that the CAO should liaise with the defendants to ascertain their status, which was confirmed in a letter from the defendants' solicitors received on 25 March 1997. A letter from the CAO to the applicant of 1 May 1998 indicated that the CAO had learned of the defendants' status separately some time during 1995 or 1996.

24. On 8 April 1998 the CAO wrote to the applicant with details of the files which it had located. On 17 June 1998 the Registrar directed that the case be listed as soon as possible after the summer vacation. In August 1998 the CAO learnt that Ferranti Instrumentation Limited had been struck off the register of companies.

25. On 21 October 1998 the Customer Service Unit of the Court Service wrote to the applicant acknowledging that there had been significant delay in listing the appeal (due to matters outside the authorities' control) and that the applicant had not been properly kept informed about progress on the case and had had to chase the court unnecessarily for information. The applicant was offered an *ex gratia* payment to cover his wasted costs in connection with the Court Service's admitted failures.

26. The Court of Appeal dismissed the plaintiffs' appeal on 13 January 1999, noting in doing so that even if the applicant had won he would not have benefited financially given the financial state of the one remaining defendant (Ferranti plc). On 19 April 1999 the Court of Appeal dismissed the plaintiffs' request for leave to appeal to the House of Lords.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained that the domestic proceedings were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which provides, so far as material:

“In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

A. Arguments of the parties

1. *The Government*

28. The Government accepted that the relevant period for the purposes of the “reasonable time” aspect of the complaint ran from 4 July 1984 until 19 April 1999, a total of fourteen years and nine and a half months. However, they submitted that, although the proceedings were unusually long, only a small proportion of the total delay could be attributed to the State.

Thus, they highlighted the fact that the proceedings were both factually and procedurally complex; the factual complexity was illustrated by, *inter alia*, the length of the trial, while the insolvency of the defendant companies during the appeal proceedings led to much greater procedural complexity before the Court of Appeal.

29. The Government also argued that the applicant did not show sufficient diligence in his conduct of the proceedings. In the High Court, he caused delay by entering judgment in default despite knowing that the defendants were in the course of formulating their defence. The claim was vaguely drafted, necessitating a request for Further and Better Particulars, to which the applicant failed to respond in a timely manner. The Summons for Directions was served more than four years late, and the plaintiffs manifestly failed to fulfil their discovery obligations. Furthermore, there were periods in which the applicant took no steps at all to progress the case to trial, and he failed to avail himself in a timely manner of means provided to ensure that the defendants fulfilled their obligations in connection with the proceedings. The trial had to be adjourned due to the applicant’s illness.

In the Court of Appeal, there was a delay of one year in providing the court with transcripts of evidence from the trial; to the extent that that delay was attributable to the court reporters, the Government submitted that the State could not be held responsible. The Government also pointed to the fact that the applicant consented to the appeal being stood out of the list following the entry into receivership of Ferranti plc.

30. The Government referred to the applicant's allegations of use by the defendants of "delaying tactics" in the proceedings, and submitted that the State's obligations in this regard were discharged by the presence of mechanisms allowing the applicant to take action to counter such tactics. The defendants' applications for security for costs, and their failure to apply to have the action dismissed for want of prosecution, also caused delay for which the Government could not be held responsible.

31. As for the competent authorities, the Government contended that the High Court made provision for the various hearings required without significant or undue delay, while the Court of Appeal was blameworthy only for the period of delay between 25 March 1997 and 8 April 1998. They accepted that some files in connection with the action were lost by the CAO but submitted that the loss in no way delayed the hearing of the appeal. In the context of proceedings which took more than fourteen years in all, they argued that a delay of just over a year on the part of the competent authorities could not justify a finding of violation of Article 6 § 1.

2. The applicant

32. The applicant submitted that the length of the proceedings was such that, in itself, it gave rise to a violation of the "reasonable time" requirement in Article 6 § 1. He did not consider that the proceedings were particularly complex. Delaying tactics were used by the defendants, but the competent authorities were responsible for more than five years of delay in all.

33. In respect of his own conduct and that of his fellow plaintiff, the applicant contended that entry of judgment in default probably had the result of reducing the time taken by the defendants to lodge a Defence to the action. He was unaware of the importance of the Summons for Directions and the long delays in serving the plaintiffs' list of documents were due to their desire to provide their list only when that of the defendants was ready. His priority throughout the proceedings was to obtain justice in the shortest time possible and to avoid the financial costs of protracted legal proceedings. Although the trial had to be adjourned in June 1991 due to his illness, the fact that it was not resumed until April 1992 was largely due to there being insufficient court time available. The delay of nearly a year in lodging transcripts of the trial with the Court of Appeal was attributable to the official court reporters and thus imputable to the Government.

34. The applicant alleged that the courts were guilty of significant delays in hearing various applications in the course of the proceedings, in

particular, delays in the hearing of the plaintiffs' appeal against the first award of security for costs in 1985, their application for an order requiring Further and Better Particulars of the Defence in 1986, and the various preliminary matters before the District Registrar and High Court in 1989 and early 1990. He stated also that no effort was made by the CAO to advise him at any time as to the conduct of the appeal following his letter of 18 June 1996 confirming that he would be proceeding with the appeal in person. The documentation was misplaced and the CAO was slow in determining the status of the defendants, and the investigation of his complaints about the CAO was ineffective. The CAO made no real effort to progress the appeal until June 1998.

B. The Court's conclusion

35. The proceedings in the present case commenced on 4 July 1984, when the applicant and the plaintiff company issued a writ against the two defendant companies. The proceedings were not concluded until 19 April 1999, fourteen years, nine and a half months later, when the plaintiffs were refused leave to appeal to the House of Lords.

36. The reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the individual case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the parties' conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, the *Gast and Popp v. Germany* judgment of 25 February 2000, *Reports of Judgments and Decisions* 2000-II, § 70).

37. The Court considers that the proceedings were both factually and procedurally complex, as demonstrated by the fact that the first instance trial lasted over six weeks (see paragraph 19 above). The subsequent administrative receivership of Ferranti in 1993, moreover, inevitably led to some delay in the appeal proceedings (see paragraphs 21 and 22 above). These matters reduce the period of time for which the respondent State can be held accountable under Article 6 § 1.

38. In addition, the Court is of the view that the majority of the delays were attributable to the conduct of the parties to the proceedings or of third parties for which the State is not responsible. For example, the plaintiffs failed to comply with the deadline for serving a list of documents, which expired on 3 January 1985, and the defendants did not apply for an order requiring discovery until 21 May 1987 (see paragraph 15 above). In addition, the plaintiffs were almost four years late in serving the Summons for Directions in the action (see paragraph 16 above). Another delay of almost a year was caused by the slowness of the court reporters, a private company, in producing a transcript of the material evidence adduced at the

first instance trial, which the plaintiffs were required to lodge with the Court of Appeal (see paragraph 20 above).

39. Nonetheless, certain periods of delay can clearly be attributed to the conduct of the State authorities. The following deficiencies are particularly noteworthy:

(1) the failure to hear in a timely manner the applicant's appeal against the Order dated 26 September 1985 requiring him to provide security for the defendants' costs. According to the applicant, the appeal was due to be heard in October 1985 but had to be postponed until the end of January 1986 (three months' delay) due to errors by the court registry (see paragraphs 12-13 above). This account has not been denied by the Government;

(2) the failure by the District Registrar to hold a timely hearing on the Summons for Directions, an application by the applicant for discovery and an application by the defendants for further security for costs, all of which were lodged in February 1989, or at least to refer them more quickly to the High Court (see paragraph 17 above). The hearing due for 7 April 1989 was adjourned, and a subsequent hearing proposed for 1 September was also adjourned. At the hearing of 25 October the District Registrar decided to adjourn again, in order to refer the matters before him to the High Court, which held hearings on 15, 17 and 24 January 1990 (eleven months' delay in all, although the Government submit that the first adjournment was caused by the parties' inaccurate time estimate);

(3) the decision to list the trial for commencement on 4 June 1991 even though the parties had indicated in February 1990 that they would be prepared for trial from 1 October 1990 (see paragraph 18 above). The trial was then adjourned on 18 June due to the applicant being unwell, but it was not recommenced until 29 April 1992 (eighteen months after the parties had first been ready);

(4) delays in progressing the appeal between November 1996 and March 1997 (four months) due to attempts by the CAO to ascertain the defendants' status, even though that Office seems to have already known the position as a result of inquiries made in 1995 and 1996 (see paragraph 23 above);

(5) the failure by the CAO to list the appeal, and organise associated matters, between March 1997 and April 1998 (thirteen months' delay; see paragraphs 23 and 24 above). It is significant in this connection that the Court Service's Customer Service Unit wrote to the applicant on 21 October 1998 acknowledging that there had been "significant delay" in listing the hearing (even though it did not accept responsibility) and that the applicant had not been kept sufficiently aware of the progress of his case (see paragraph 25 above).

40. The Court notes that in England and Wales it is to a large extent for the parties to civil proceedings to see that each step in the proceedings follows within a reasonable time, and there are a number of procedural tools which are available to each party to prevent excessive delay on the part of the other. However, the domestic courts retain an obligation to ensure compliance with the guarantees of Article 6 § 1 of the Convention (see, for example, the *Scopelliti v. Italy* judgment of 23 November 1993, Series A no. 278, § 25).

41. The Court concludes, in the light of this principle, that the overall length of the proceedings, combined with the above-mentioned specific instances of delay attributable to the State, gave rise to a violation of Article 6 § 1 in this case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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. Pecuniary damage

43. The applicant claimed the costs of the domestic proceedings, together with compound interest.

44. The Government submitted, first, that the applicant was legally aided until May 1996, and so his costs up until that date had already been reimbursed. Once his legal aid certificate was discharged the applicant acted in person and did not, therefore, incur any legal costs. In any event, any legal costs and expenses incurred by the applicant during the domestic proceedings were not caused by the alleged violation of the Convention, and would have been incurred whether or not the proceedings had been determined within a reasonable time.

45. The Court recalls the well-established principle underlying the provision of just satisfaction for a breach of Article 6, that the applicant should as far as possible be put in the position he would have enjoyed had the proceedings complied with the Convention's requirements. The Court will award monetary compensation under Article 41 only where it is satisfied that the loss or damage complained of was actually caused by the violation it has found, since the State cannot be required to pay damages in respect of losses for which it is not responsible (see *Davies v. the United Kingdom*, no. 42007/98, 16.07.02, § 34). It cannot be said that the pecuniary

loss claimed by the applicant was attributable to the unreasonable length of the proceedings. The Court therefore rejects the claim under this head.

B. Non-pecuniary damage

46. In addition the applicant claimed GBP 275,000 in general and exemplary damages for suffering and distress caused by delay and maladministration.

47. The Government submitted that the applicant had provided no firm evidence of any physical or emotional damage occasioned by the alleged unreasonable delay.

48. The Court observes that some forms of non-pecuniary damage, including emotional distress, by their very nature cannot always be the object of concrete proof. This does not prevent the Court from making an award if it considers that it is reasonable to assume that an applicant has suffered injury requiring financial compensation (see the above-mentioned *Davies* judgment, § 38). In the present case, it is reasonable to assume that the applicant suffered distress, anxiety and frustration as a result of the delays found by the Court to have been attributable to the State (see paragraphs 38 and 39 above). The Court awards EUR 4,000 under this head.

B. Costs and expenses

49. The applicant was not represented in the proceedings before the Court of Human Rights, but claimed for the time he spent in pursuit of his application at the rate of GBP 20 an hour. In addition he claimed for secretarial and photocopying disbursements. His total claim under this head amounted to GBP 12,427.

50. The Government submitted that the sums claimed were notional, and not legal costs actually incurred by the applicant.

51. The Court observes that although the applicant did not incur any legal costs in his application to the Court, he must necessarily have incurred certain expenses, such as postage and photocopying. It therefore awards EUR 500 under this head.

C. Default interest

52. The Court considers that the default interest should be fixed at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 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, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of expenses, to be converted into pounds sterling at the rate applicable on the date of settlement;
 - (b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President