CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39197/98
by Patrick Grattan FOLEY
against the United Kingdom

The European Court of Human Rights, sitting on 11 September 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 12 August 1997 and registered on 6 January 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a British citizen, born in 1924. He lives in Stratford-upon-Avon and represents himself before the Court. The respondent Government are represented by their Agent, Ms Joanne Foakes of the Foreign and Commonwealth Office.

The circumstances of the case

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

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.

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 14-day deadline, leading the defendants to apply to the court which, on 21 March 1985, ordered that the plaintiffs reply within 42 days.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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 the 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

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. 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 he 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.

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.

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.

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.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the proceedings exceeded a "reasonable time". He also complains that he was not informed in due time that one of the defendant companies had been

made a "dormant company", that if he had known, his position on the payment into court might well have been different, that the defendants continually frustrated the action and that the proceedings were not sufficiently publicised. In addition, the applicant refers to Articles 8 and 17 of the Convention.

THE LAW

1. Alleged violation of Article 6 § 1 of the Convention as regards the length of the proceedings

The applicant complains that the domestic proceedings were not concluded within a reasonable time.

Article 6 § 1 of the Convention 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."

The Government note 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 14 years and 9½ months. However, they submit that, although the proceedings were unusually long, only a small proportion of the total delay can be attributed to the State.

The Government highlight the fact that the proceedings were both factually and procedurally complex. They say that 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.

The Government also argue 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. They say that the claim was vaguely drafted, necessitating a request for Further and Better Particulars, to which the applicant failed to respond in a timely manner. They highlight the fact that the Summons for Directions was served more than 4 years late, and that the plaintiffs manifestly failed to fulfil their discovery obligations. They also point to periods in which the applicant took no steps at all to progress the case to trial. They indicate that the applicant failed to avail himself in a timely manner of means provided to ensure that the defendants fulfilled their obligations in connection with the proceedings. They also note that the trial had to be adjourned due to the applicant's illness. In the Court of Appeal, they highlight the delay of a year in providing the court with

transcripts of evidence from the trial and state that, to the extent that that delay was attributable to the court reporters, the Government cannot be held responsible. They also point to the fact that the applicant consented to the appeal being stood out of the list following the entry into receivership of Ferranti plc.

The Government also draw attention to the applicant's allegations of use by the defendants of "delaying tactics" in the proceedings, and submit that the Government'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 contend they cannot be responsible.

As for the competent authorities, the Government contend 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 accept that some files in connection with the action were lost by the CAO but submit that the loss in no way delayed the hearing of the appeal. In the context of proceedings which took more than 14 years in all, they argue that a delay of just over a year on the part of the competent authorities cannot justify a finding of violation of Article 6 § 1.

The applicant submits 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 argues that the proceedings were not particularly complex. He points to "delaying tactics" being used by the defendants, but estimates that the competent authorities were responsible for than five years of delay in all.

In respect of his own conduct and that of his fellow plaintiff, the applicant states 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 states that he was unaware of the importance of the Summons for Directions and states that the long delays in serving their list of documents were due to the plaintiffs' desire to provide their list only when that of the defendants was ready. He says that his priority throughout the proceedings was to obtain justice in the shortest time possible and points to the financial costs of protracted legal proceedings. He states that, 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 courts available. He submits that 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.

The applicant alleges that the court was guilty of significant delays in hearing various applications in the course of the proceedings. He highlights 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 states 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. He highlights the fact that documentation was misplaced and that the CAO was slow in determining the status of the defendants, and alleges that the investigation of his complaints about the CAO was ineffective. He states that the CAO made no real effort to progress the appeal until June 1998.

The Court considers that the part of the application concerning the length of proceedings raises complex issues of law and fact under Article 6 § 1 of the Convention, the determination of which should depend on an examination of the merits. It concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

2. Other alleged violations of Article 6 § 1 of the Convention

The applicant complains also under that Article about the domestic courts' failure to keep him informed of essential matters in connection with the appeal, of the defendants' conduct throughout the proceedings and of lack of publicity of the proceedings.

The Court notes that Article 6 § 1 does not impose on States any obligation to inform litigants of their opponents' financial difficulties. Moreover, there is no evidence to support the contention that the proceedings were not "public". It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

3. Alleged violation of Articles 8 and 17 of the Convention

The applicant complains under Article 8 about the fact that letters sent in connection with the domestic proceedings failed to reach their destination. Article 8 provides, so far as material:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence."

The applicant complains also under Article 17 about threats received from "persons unknown", alleged tapping of telephone calls and intentional removal of documents from court files.

The Court recalls that Article 8 does not oblige the state to provide a perfectly functioning postal system (see X v. Germany, application

no. 8383/78, Commission decision of 3 October 1979, Decisions and Reports (DR) 17, p. 227).

Furthermore, the Court notes that none of the allegations made in connection with the Article 17 complaint is supported by any evidence.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously,

Declares admissible, without prejudging the merits of the case, the applicant's complaint that the length of proceedings exceeded a "reasonable time" in violation of Article 6 § 1 of the Convention;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President