CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41552/98
by Lorelie STAINES
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 8 June 1999 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, J*udges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 April 1998 by Lorelie STAINES against the United Kingdom and registered on 9 June 1998 under file no. 41552/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British national, born in 1954 and living in Walton-on-Thames, England. She is a chartered accountant by profession.

She is represented before the Court by Mr David Gibson-Lee, a lawyer practising in London.

A. Particular circumstances of the case

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

In January 1994 the applicant and a co-accused, Mr M., were tried before a jury at the Inner London Crown Court on a number of charges including counselling or procuring another to deal in securities while being a prohibited person, contrary to section 1(7) of the Company Securities (Insider Dealing) Act 1985 ("the 1985 Act").

According to the prosecution, a certain Mr P., a chartered accountant, knew through his employment that one of his firm's clients was considering taking over a company called Aaronsons. He attended a meeting on 16 July 1990 at which the financial positions of the bidding and target companies were reviewed and, as a result, became privy to the offer price per share of the target company and the timetable for acquisition. In consequence of this knowledge Mr P. was deemed a "connected person" in possession of "unpublished price – sensitive information" within the meaning of sections 9 and 10 of the 1985 Act.

At the applicant's trial Mr P. testified that he had a meal with the applicant and Mr M. at a restaurant on 18 July 1990. Following the meal the party returned to the applicant's house where Mr M. was staying. Mr P. mentioned at the house that he was working on a bid which one of his firm's clients was proposing to make for the publicly quoted capital of the target company. The applicant and Mr M. were both keen to find out the name of the company, but Mr P. was reluctant to tell them. A guessing game ensued during which Mr P. vouchsafed some details of the company including the fact that the take-over was likely to be in two weeks' time and that the company made kitchen products, was listed in the industrial sector of the share listings and was involved in the construction industry. Mr P. also mentioned the price earnings ratio and the share price of the company and, as the discussion progressed, the offer price. A newspaper with company listings was produced and this was used as a basis for questions in regard to various companies. At one stage the applicant and Mr M. tested Mr P. with the name of Aaronsons but Mr P. claimed that he did not know the name of the company. Mr P. testified at the trial that he became uncomfortable with the line of questioning but stated at the trial that he had given insufficient information to enable the company to be identified.

The applicant's husband gave evidence at the trial that on 19 July 1990 the applicant researched the possibility of finding an investment for her father. The applicant's husband discussed the matter with Mr M. and told him about a list of names which the applicant had left on the coffee-table. At the trial the applicant's husband stated that he may have mentioned to the applicant and Mr M. that that he had a preference for Aaronsons but that he had not connected this company with Mr P. The applicant's father testified at the trial that in July 1990 he had bought 12,000 shares in that company and had subsequently sold them at a profit and divided the proceeds among his children including the applicant. He stated that he

had discussed with the applicant the shares in which he should invest and she knew he was looking at the building industry. She mentioned to him that she had spoken to others about price-earnings ratios and after some research she had come up with the name of Aaronsons. According to the applicant's father, she had not advised him to invest but to consider Aaronsons along with other companies.

On 15 November 1996 the Secretary of State at the Department of Trade and Industry (the "DTI") appointed Inspectors under section 177 of the Financial Services Act 1986 (see domestic law below) to investigate share dealings in Aaronsons. In a letter to the DTI Inspectors, the applicant stated that on the evening in question there had been a general discussion at her house about what would make a good buy or investment. Price-earnings ratios and share prices had been mentioned as well as the fact that the building industry was a good sector. She wished to pass on advice to her father. She had previously passed on information based on rumours, none of which had been of any value. She studied the newspapers and looked at relevant companies and made some telephone enquiries. Aaronsons emerged as an appropriate company for investment. She spoke to her father who agreed to make an investment on his own and her behalf with an arrangement for payment at a later stage. At no time did she think she was doing anything remotely illegal and did not know that Mr P. was connected with the company.

The applicant confirmed the content of her letter when interviewed by the Inspectors, affirming that had Mr P. said anything definite about Aaronsons she would not have acted on it; similarly, if she had known that he was connected with that company.

When interviewed by the Inspectors Mr M., who purchased 5,000 shares in Aaronsons through a third party on 25 July 1990, stated that he had so much to drink in the course of the evening that he could not recall what had been said at the applicant's house. One or two days later the applicant's husband had shown him his wife's research which referred to the names of companies including that of Aaronsons. He then began to observe the company's share price which had started to move. He stated that the applicant's research had jogged his memory about what had been discussed at her house. In a letter to the Inspectors the co-accused subsequently stated that he believed that Mr P. had disclosed financial data on the evening in question but that he could not remember the exact information. In the letter he mentioned that Mr P. spoke of an interesting range of ratios and referred to the share price of what he assumed was the target company.

The defence case was that although some information may have been gleaned from Mr P., it was not complete and was quite inadequate to identify Aaronsons as the target company. On that account the applicant and Mr M. submitted that the information was not "unpublished price-sensitive information". The applicant relied at the trial on the evidence she gave to the Inspectors. She did not testify. Mr M. on the other hand did give evidence which was broadly in line with what he had stated to the Inspectors. He also mentioned at the trial that on the day after the party at the applicant's house the applicant had called him and told him she was doing some research. When she mentioned Aaronsons to him, he said "that was it", not because of anything indicated by Mr P. but because of the connection with a reference earlier in the year. He did not explain this connection to the applicant. By the time of giving evidence he realised that the connection was false and was based on a mistake. In his evidence to the jury, Mr M. suggested that the identification of Aaronsons was in large measure the result of chance.

On 17 January 1994 the applicant and Mr M. were found guilty as charged and each sentenced to a fine.

Leave to appeal was granted by the Single Judge on 16 June 1994.

The Court of Appeal (Criminal Division) dismissed the appeal on 24 April 1997 having considered, *inter alia*, the applicant's arguments based on the reasoning of the European Court of Human Rights in its Saunders v. the United Kingdom judgment of 17 December 1996 (*Reports of Judgments and Decisions* 1996-VI).

The Lord Chief Justice, Lord Bingham discussed the applicant's contentions on this point in the following terms:

> "The submission made is that the admission into evidence in this case of answers obtained from the [applicant] by inspectors using coercive powers of interrogation affected the fairness of the proceedings so adversely that this court should rule that such answers should have been excluded. No such submission was made to the trial judge, since the decision in Saunders v. the United Kingdom had not been given. Now, however, in the light of that decision of the European Court of Human Rights, it is argued that we should rule that the evidence should have been excluded.
>
> Mr Saunders, in his application to Strasbourg, complained that he had been denied a fair trial of a criminal charge against him in breach of Article 6(1) of the European Convention on Human Rights. That complaint was upheld by a majority of the court. The basis of the complaint was that inspectors appointed by the Department of Trade and Industry had exercised compulsory powers to question him; that the answers he had given had been relied on at his criminal trial in support of the case against him; that he had thus been denied the exercise of his right not to incriminate himself; and that freedom to exercise such right is a necessary feature of a fair criminal trial.
>
> The [applicant] relies, by analogy, on that reasoning. The powers in question are substantially the same. The answers obtained by the inspectors formed part of the prosecution case and therefore it is submitted that there was a violation of the Convention in this case also.
>
> The Crown accept in their skeleton argument that were an application to be made to the Convention institution, the use made of the answers obtained from the [applicant] would be likely to constitute a violation of Article 6 of the Convention. It is also accepted for the purpose of legal argument that were the Convention institutions to consider the matter, they might conclude, following the Saunder's judgment, that the facts of (a) compulsion to answer, and (b) the use of the compelled answers by the prosecution in leading evidence, in themselves lead to the conclusion that the criminal proceedings were not fair, in violation of Article 6, paragraph 1, of the Convention. ...
>
> The difficulty, as it seems to us, which the applicants face is to show that the court should exercise its powers under section 78(1) [of the Police and Criminal Evidence Act 1984] to exclude, because of its adverse effect on the conduct of the proceedings, material which section 177(6) [of the Financial Services Act 1986] has expressly stipulated may be used in evidence against a defendant. ... [The applicant's counsel] suggests that there is in the present circumstances a conflict between section 177(6) of

the 1986 Act and section 78(1) of the 1984 Act and suggests that this conflict should be resolved by reference to the provisions of the European Convention. In our judgment, however, there is no conflict between the two provisions. Section 176(6) shows that Parliament did not consider the use of this evidence to be unfair ... it is almost as if there were a statutory presumption to that effect."

The Lord Chief Justice added:

"... the present position is very unsatisfactory. It would appear that the [applicant has] or certainly may have grounds for complaining in Strasbourg and, if the penalty is enforced and [she] incurs costs in seeking relief, [she] may have claims to compensation against Her Majesty's Government. That is not, however, something which the courts can remedy. ... The United Kingdom is subject to a Treaty obligation to give effect to the European Convention on Human Rights as interpreted by the Court of Human Rights, but that again is not something which this court can enforce."

On 10 November 1997 the House of Lords refused the applicant leave to appeal.

B. Relevant domestic law

The powers in issue in this case are largely contained in the Financial Services Act 1986 at section 177. Subsection (1) of that section provides:

"If it appears to the Secretary of State that there are circumstances suggesting that there may have been a contravention of section 1, 2, 4 or 5 of the Company Securities (Insider Dealing) Act 1985, he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such contravention has occurred and to report the results of their investigations to him."

Subsection (3) reads:

"If the inspectors consider that any person is or may be able to give information concerning any such contravention they may require that person

(a) to produce to them any documents in his possession or under his control relating to the company in relation to whose securities the contravention is suspected to have occurred or to its securities;

(b) to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it shall be the duty of that person to comply with that requirement."

Subsection (4) empowers an inspector to examine on oath any person whom he considers is or may be able to give information concerning any such contravention, and to administer an oath accordingly.

Subsection (6) provides:

> "A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him."

Section 78(1) of the Police and Criminal Evidence Act 1984, provides:

> "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

COMPLAINTS

The applicant complains, with reference to the Court's judgment in the case of Saunders v. the United Kingdom (17 December 1996, *Reports of Judgments and Decisions* 1996-VI), that her right to a fair trial has been breached on account of the fact the prosecution made use of the answers and statements which she was compelled under law to give to the DTI Inspectors. The applicant invokes Article 6 §§ 1 and 2 of the Convention.

The applicant also relies on Article 13 of the Convention arguing that she was denied an effective remedy since the Court of Appeal acknowledged that the domestic courts could not enforce the obligations which the respondent State had assumed under the Convention.

THE LAW

1. The applicant maintains that her rights under Article 6 §§ 1 and 2 of the Convention were breached. In her submission she did not receive a fair hearing since her right not to incriminate herself had been undermined through the use made by the prosecution of the statements she gave to the DTI Inspectors under statutory compulsion.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of its Rules of Procedure, to give notice of them to the respondent Government.

2. The applicant further complains under Article 13 of the Convention. She submits that she has no effective remedy under domestic law to enforce her right to a fair hearing guaranteed under Article 6 of the Convention by requiring the domestic court not to give effect to section 177(6) of the Financial Services Act 1986.

The Court recalls that Article 13 of the Convention does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 47, § 85).

It follows that this complaint is incompatible *ratione materie* with the provisions of the Convention, 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,

DECIDES TO ADJOURN the examination of the applicant's complaint that she was denied her right to a fair procedure;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

J-P. Costa
President