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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 73299/01
by Bryan STANFORD
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 12 December 2002 as a Chamber composed of

Mr G. RESS, *President*,
Sir Nicolas BRATZA,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 16 June 2001,

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, Mr Bryan Stanford, is a United Kingdom national, born in 1949 and currently in prison in Durham. He is represented before the Court by Mr M. Farrar, a lawyer practising in Bradford.

A. The circumstances of the case

In 1988 the applicant was convicted of rape, indecent assault, kidnapping and threats to kill in relation to two girls, aged 15 and 10 respectively. He was sentenced to 10 years' imprisonment. In 1997 he was again imprisoned having been found guilty of three counts of indecent assault.

On 22 June 2000 the applicant was convicted by the Crown Court on three counts of rape and five counts of indecent assault concerning two male minors, two brothers aged 13 and 6. He was further convicted on one charge, and he pleaded guilty to two charges, of taking indecent photographs of one of those minors.

He was sentenced to life imprisonment pursuant to section 2 of the Crime (Sentences) Act 1997 in relation to the rape conviction.

In that regard, the trial judge stated *inter alia*:

> "the evidence and your demeanour in the witness box throughout this case demonstrate that you are a scheming, manipulative and highly plausible paedophile with a quite appalling record behind you... You are in my view a dangerous man when at large where young children of either sex are involved. Under section 2 ... I have no alternative but to pass an automatic life sentence, which I do with no lack of conviction or enthusiasm."

The applicant was also sentenced to four years' imprisonment for each indecent assault conviction, the four years being concurrent to each other but consecutive to the rape sentence. For each of the indecent photograph convictions, he was sentenced to 30 months' imprisonment, concurrent with each other and with the indecent assault sentences.

In fixing the tariff in respect of the life sentence, the trial judge made it clear that if he had been required to set a determinate sentence, he would have chosen 15 years' imprisonment, made up of 11 years in respect of the rape offences and 4 years to run consecutively in respect of the indecent assault offences. He explained that the period of 15 years had been chosen in view of:

> "the aggravating features, that is to say your previous convictions and indeed the rest of your track record, the breach of trust, the number of victims here, their youth, the frequency of the acts and the nature of them."

The trial judge accordingly fixed the tariff at 7 1/2 years' imprisonment since the applicant would normally have had to serve some half of any determinate sentence. Taking account of the period already spent in custody pending trial (9 months), the minimum period to be served by the applicant

was fixed at a further 6 years and 9 months**.** The trial judge stated that in matters of parole:

> "... my present feeling is that great care should be exercised. I do not doubt that it always is, but in this case particular care should be exercised before you are let loose on the community."

The applicant applied for leave to appeal against conviction and sentence. Concerning his conviction, he argued that the judge was wrong to refuse to sever the indictment so that the jury would not be aware of the counts of the taking of photographs to which he had pleaded guilty as this was likely to have an overwhelmingly prejudicial effect on the jury so as to render a fair trial impossible. He also argued that the judge had been wrong to direct that the jury could consider the evidence of one of the boys as probative in respect of the evidence of the other. Concerning his sentence, he argued that the life sentence was imposed in breach of Articles 3 and 5 of the Convention.

On 25 October 2000 leave to appeal was refused by a single judge.

On 6 March 2001 the Court of Appeal dismissed his renewed application for leave to appeal against sentence and conviction. On the grounds of appeal against conviction, they found no point of merit, there being no ground to criticise the refusal to sever the indictment and the judge's direction being clear and appropriate concerning the relevance of the photographs and the supportive value of the boys' evidence. As regarded the applicant's sentence, it stated that it had no doubt that this was a case which called for severe sentences. It reiterated the trial judge's remarks and stated:

> "So far as that is concerned, the applicant contends that the imposition of an automatic life sentence, pursuant to the then current Act was contrary to the Articles 3 and 5 of the Convention in that it was arbitrary to impose that sentence without any specific assessment of whether the accused is dangerous. Of course that is wholly wrong. The sentencing remarks just quoted clearly indicated the judge's view as to the dangerousness of this particular applicant.
>
> It is not the view of this Court that these automatic life sentences were obviously contrary to Article 3 or Article 5, the contentions are not supported by authority and are not supportable by authority and are not sustainable.
>
> In any event, within the context of this case, as the Single Judge observed, a discretionary life sentence would not have been excessive in any event."

The applicant applied to the Criminal Cases Review Commission for a review of his conviction and sentence. In a decision dated 29 November 2001, the CCRC found no grounds for referring his case to the Court of Appeal on either sentence or conviction.

B. Relevant domestic law and practice

1. The Crime (Sentences) Act 1997 ("the 1997 Act")

The 1997 Act came into force on 1 October 1997. Section 2(1) and (2) provide as follows:

> "(1) This section applies where -
>
> (a) a person is convicted of a serious offence committed after the commencement of this section; and
>
> (b) at the time when that offence was committed, he was 18 or over and had been convicted in any part of the United Kingdom of another serious offence.
>
> (2) The court shall impose a life sentence, that is to say -
>
> (a) where the person is 21or over, a sentence of imprisonment for life; (b) where he is under 21, a sentence of custody for life under section 8(2) of the Criminal Justice Act 1982,
>
> unless the court is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
>
> (3) Where the court does not impose a life sentence, it shall state in open court that it is of that opinion and what the exceptional circumstances are."

Section 2(5) listed the offences considered "serious" for the purposes of the section. The offences listed in section 2(5) were already punishable by a maximum of life imprisonment and they include rape.

Sections 3 and 4 of the 1997 Act impose mandatory penalties of seven and three years for a third conviction on class A drug trafficking offences and domestic burglaries, respectively. Both sections oblige the court to impose the fixed sentence when the statutory conditions are fulfilled except:

> "where the court is of the opinion that there are specific circumstances which --
>
> (a) relate to any of the offences or to the offender; and
>
> (b) would make the prescribed custodial sentence unjust in all the circumstances."

2. Regina v. Offen, Regina v. McGilliard, Regina v. McKeown, Regina v. Okwuegbunam, Regina v. Saunders judgment of the Court of Appeal of 9 November 2000

In this case, decided after the entry into force of the Human Rights Act 1998, the Court of Appeal adopted a more flexible interpretation of the words "exceptional circumstances" in section 2 of the 1997 Act.

The appellants contended that section 2 was incompatible with, *inter alia*, Articles 3 and 5 of the Convention. The Court of Appeal agreed that

the manner of interpreting section 2 to date meant that that section could clearly operate in a disproportionate manner, it not being difficult to find examples of situations where it would be wholly disproportionate to impose a life sentence even for a second serious offence.

It considered that the problem would disappear if the words "exceptional circumstances" in section 2 were construed in a manner which accorded with the policy of Parliament in adopting the section. That policy was to protect the public. Accordingly, a finding that an offender does not constitute a significant risk to the public should be considered to constitute "exceptional circumstances" which approach, the Court of Appeal considered, would accord with parliamentary intent and with the provisions of the Convention.

COMPLAINTS

The applicant mainly complains under Article 5 about the automatic imposition of a life sentence pursuant to section 2 of the Crime (Sentences) Act 1997. He also invokes Articles 3 and 7 of the Convention in this respect.

The applicant further complains under Article 6 of the Convention about a number of matters. He complains that certain evidence was unlawfully withheld from him by his solicitor. He contends that he (not his legal representatives) was excluded from the hearing for a period of time. He alleges that the trial judge was partial and presumed he was guilty. He considers unfair the trial judge's decision not to sever the contested charges concerning sexual offences from those concerning the photographs. He further complains about the judge's direction to the jury that they could consider the evidence of one of the minors probative in respect of the other as regards similar facts. He also claims that he was not entitled to legal aid for his appeal and was therefore unable to obtain legal representation. He makes numerous allegations about the quality of the legal representation he had.

THE LAW

1. The applicant complains of the automatic imposition of a sentence of life imprisonment. The relevant provisions of the Convention provide:

Article 5 § 1

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 7 § 1

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

(a) The parties' submissions

The Government submit that the applicant was at all times lawfully detained after conviction by a competent court in accordance with the procedure prescribed by law and that such detention was not arbitrary. The imposition of the life sentence was not arbitrary as it was not automatic - the judge was given a discretion by reference to "exceptional circumstances - and there was evidence before the trial judge and Court of Appeal in the extremely serious facts of the applicant's case that the applicant did pose a continuing danger to the public justifying an indeterminate life sentence. Following the decision in *R. v. Offen*, the implications of Article 5 had been taken into account in the interpretation of the relevant legislation and it would have been open to the Court of Appeal in this applicant's appeal to alter his sentence if it had considered that the trial judge had erred in his approach.

The applicant submits that the evidence against him was false and that he did not commit any of the acts save the ones to which he pleaded guilty. The judge was in his view determined to obtain a conviction and though the applicant was polite and co-operative in the witness box, the judge proceeded unfairly to judge him as dangerous. He argues that the imposition of an automatic life sentence pursuant to section 2 of the Crime (Sentences)

Act 1997 was contrary to Articles 3 and 5 of the Convention in that it was arbitrary when it was imposed without any specific assessment of whether the accused is dangerous but simply because it was the second occasion on which he has committed a classified offence.

(b) The Court's assessment

(i) Article 5 § 1

The Court recalls that in order to comply with Article 5 § 1 of the Convention, the detention in issue must take place "in accordance with a procedure prescribed by law" and be "lawful". The Convention here refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the aim of Article 5, namely to protect the individual from arbitrariness (see, amongst many authorities, *Winterwerp v. the Netherlands,* judgment of 24 October 1979, Series A no. 33, pp. 17-18, 19-20, §§ 39 and 45; *Bizzotto v. Greece,* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1738, § 31, and *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1961, § 46).

It is not contested in this case that the applicant's detention was in accordance with a procedure prescribed by English law and otherwise lawful under English law. It is argued rather that the sentence of imprisonment imposed by the trial judge in convicting the applicant offended the rule against arbitrariness since it was required by statute regardless of the circumstances of his individual case or the seriousness of his particular offences.

The Court observes that in imposing the life sentence pursuant to section 2 of the 1997 Act the trial judge indicated, in strong terms, that he considered a life imprisonment appropriate for the applicant whom he regarded as a dangerous paedophile who should not be released while he remained a risk to the public. The Court of Appeal which reviewed the applicant's sentence after the case of *R. v. Offen* had drawn attention to the requirements of the Convention, found that the trial judge had clearly made findings of dangerousness based on the individual facts of his case. Furthermore, the Court notes that section 2 of the 1997 Act did not automatically apply a life sentence to a repeat offender and that it was provided that in "exceptional circumstances" a life sentence might not be justified. The *Offen* case established that such circumstances existed where the offender did not constitute a significant risk to the public. If the Court of Appeal had considered that the trial judge had failed properly to apply this approach, it would have had the power to substitute an appropriate sentence of its own.

On the facts of this case therefore, the Court is satisfied that the detention imposed on the applicant pursuant to his conviction cannot be regarded as arbitrary. Accordingly, there is no appearance of a violation of Article 5 § 1 of the Convention and this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

(ii) Articles 5 § 5, 3 and 7

Since the Court has found no issue arising above under Article 5 § 1 of the Convention, the applicant cannot complain under Article 5 § 5 of any lack of enforceable right to compensation for any breach of the provisions of Article 5.

As regards Article 3 of the Convention, the Court has hinted that a life sentence without any possibility of release imposed on a child even for murder could raise problems under Article 3 (*Hussain v. the United Kingdom* and *Prem Singh v. the United Kingdom,* judgments of 21 February 1996, *Reports* 1996-I, and, more recently, *T. v. the United Kingdom* and *V. v. the United Kingdom* [GC], nos. 24724/94 and 24888/94, judgments of 16 December 1999). Indeed it is not excluded that a life sentence imposed on an adult with no possibility of release might also fall within the scope of Article 3 (*Kotälla v. the Netherlands*, no. 7994/77, Commission decision of 6 May 1978, Decisions and Reports 14, p. 239, and *Einhorn v. France* (dec.), no. 71555/01, ECHR 2001-XI). However, in this case, the minimum period which the applicant is to serve in prison after sentencing is 6 years and 9 months, after which any continued detention would be reviewed by the Parole Board, which has the power to order release if it finds the applicant no longer poses a risk to the community. In those circumstances, the Court does not consider the applicant can claim that he has no hope of release and does not find any other basis to conclude that he has been the victim of treatment contrary to Article 3 of the Convention.

Furthermore, concerning the complaint raised by the applicant under Article 7 of the Convention, the Court observes that section 2 of the 1997 Act was in force when the relevant second crime was committed by the applicant and finds no element of retrospective imposition of a heavier penalty involved in this case.

This part of the application therefore discloses no appearance of a violation of the provisions invoked by the applicant and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant has also made complaints about his trial and conviction under Article 6 § 1 of the Convention which provides as relevant:

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

The applicant complains that certain evidence (including social service and school records of the victims, statements of the victims and their parents together with a video of one of the victims) was unlawfully withheld from him by his solicitor. Since this is a complaint levelled against his legal representatives rather than the courts or any body for which the Government would bear responsibility, the Court considers that it is incompatible *ratione personae* with the provisions of the Convention. The applicant also contends that he (not his legal representatives) was excluded from the hearing for a period of time. He provides no details at all of the surrounding circumstances, for how long this was and what his representatives told him even though the reason was likely linked to the evidence of the children, found to be victims of serious sexual offences carried out by him. The Court notes, in any event, that the applicant did not raise any of the above matters on his appeal.

The Court finds that the applicant's allegations about the judge being partial and about being presumed guilty are general, unsubstantiated and were also not raised on appeal. The trial judge did make strong comments about him during sentencing (including that he was a "scheming, manipulative and highly plausible paedophile"). However, those comments were made after conviction (see, in this connection, *Philllips v. the United Kingdom*, ECHR 2001-VII, § 35) and constituted that judge's synthesis of the evidence and of the jury's findings expressed for the purposes of giving reasons for the serious sentences about to be imposed on the applicant.

The applicant further complains about the trial judge's decision not to sever the contested charges concerning sexual offences on minors from those concerning indecent photographs of the same minors to which he had pleaded guilty. He also complains about the judge's direction to the jury that they could consider the evidence of one of the minors probative in respect of the other as regards similar facts. The trial judge specifically directed the jury in both these respects in a manner which the Court of Appeal found clear and appropriate. The Court does not consider that the disclosure to the jury of an undisputed and highly relevant fact (that the applicant had taken indecent photographs of minors he was accused of raping and assaulting) gives rise in the circumstances to any issue under Article 6. Nor does the possible reliance by the jury on evidence given by one child as probative in respect of the other as regards similar facts disclose any problem of unfairness contrary to Article 6 of the Convention.

The applicant also alleges that he was not entitled to legal aid for his appeal and that he was therefore unable to obtain legal representation. However, counsel drafted his grounds for leave to appeal. He was represented by his original solicitors during the proceedings before the single judge and by another firm of solicitors during those before the full Court of Appeal (see *Monnell and Morris v. the United Kingdom,* judgment of 2 March 1987, Series A no. 115, §§ 62-70). His numerous complaints

about his legal representatives are either incompatible *ratione personae* with the provisions of the Convention or, in so far as he was legally aided, not demonstrative of less than effective assistance so as to engage the responsibility of the State (*Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, § 33).

Taking the proceedings as a whole therefore, the Court does not find that the applicant's trial presented any appearance of unfairness contrary to Article 6 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER	Georg RESS
Registrar	President