



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41903/98  
by Susan STUART  
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 6 July 1999 as a Chamber composed of

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

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 24 April 1998 by Susan STUART against the United Kingdom and registered on 26 June 1998 under file no. 41903/98;

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

Having deliberated;

Decides as follows:

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### THE FACTS

The applicant is a British national, born in 1960 and living in Banffshire, Scotland. She is represented before the Court by Mr C.S. Fyfe, a lawyer practising in Glasgow. The facts of the case, as submitted by the applicant, may be summarised as follows.

Between the ages of seven and thirteen (1967-1973), the applicant was subjected to repeated and systematic rape and sexual abuse by her step-father, who lived with the applicant, her mother and brother. The applicant was too frightened to report the matter, but eventually her brother, who was also abused by their step-father, informed the police on 5 December 1996. The step-father was convicted in Aberdeen High Court in March 1997 of rape and lewd and libidinous practices. He was sentenced to seven years' imprisonment in respect of his offences against the applicant, and a further three years' in respect of those against the applicant's brother.

The abuse has had a highly detrimental effect on the applicant. She has attempted suicide on three occasions and suffered depression and relationship problems which have led to two divorces.

On 26 February 1997 the applicant lodged an application for criminal injuries compensation with the Criminal Injuries Compensation Authority ("CICA"). On 11 April 1997 the CICA wrote to the applicant explaining that her application had been refused under paragraph 7(b) of the Criminal Injuries Compensation Scheme 1996, which expressly excludes the payment of compensation where the criminal injury was received before 1 October 1979 and the victim and assailant were living together at the time as members of the same family.

The applicant lodged a review against this decision which was refused by the CICA on 16 September 1997. She then lodged an appeal to the Criminal Injuries Compensation Appeals Panel. The appeal was refused on 12 January 1998.

### COMPLAINTS

The applicant complains, under Articles 3 and 8 of the Convention, that the State is under a positive obligation to provide practical and effective protection against treatment such as that caused to the applicant by her step-father, and that this obligation extends to the provision of compensation when it cannot be obtained from the perpetrator. She complains under Article 14 in conjunction with Articles 3, 8 and 13 that the distinction between victims of criminal injuries who were living together as family members with their assailants at the relevant time, and other victims, is discriminatory.

### THE LAW

1. The applicant complains about the failure of the State to compensate her for the ill-treatment inflicted by her step-father. She invokes Articles 3 and 8 of the Convention, which provide respectively:

Article 3:

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

Article 8:

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court recalls that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Articles 3 and 8, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, or grave interferences with private life, including ill-treatment administered by private individuals (see the *A. v. the United Kingdom* judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 22 and the *Stubbings and Others v. the United Kingdom* judgment of 22 October 1996, *Reports* 1996-IV, § 62). Sexual abuse is unquestionably an abhorrent form of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such ill-treatment (see the above-mentioned *Stubbings and Others* judgment, § 64 and see also the *Aydin v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, § 86).

In the instant case deterrent sanctions were in existence. Rape and sexual abuse is regarded most seriously by Scottish law and is subject to severe maximum penalties. Proceedings were brought against the applicant's step-father, who was convicted and sentenced to seven years' imprisonment in respect of his assaults on her. In principle, civil remedies were also available provided they were sought within the statutory time limit. The Court in its above-mentioned *Stubbings and Others* judgment found that the protection thus afforded by the domestic law against the sexual abuse of children satisfied the requirements of Article 8 of the Convention and that the Article did not necessarily require that States should additionally provide unlimited civil remedies in circumstances where criminal law sanctions were in operation (see the above-mentioned *Stubbings* judgment, §§ 65-67). For similar reasons, the Court finds that the State's positive obligation under Articles 3 and 8 cannot be interpreted as requiring a State to provide compensation to the victims of ill-treatment administered by private individuals.

The applicant's complaint under Articles 3 and 8 that she has been denied State compensation in respect of her ill-treatment by her step-father is, therefore, incompatible *ratione materiae* 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.

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2. In addition, the applicant complains about the difference in treatment created by paragraph 7(b) of the Criminal Injuries Compensation Scheme 1996, between victims of criminal injuries sustained before October 1979 who were living together as family members with their assailants at the relevant time, who are not entitled to compensation, and other victims. She invokes Article 14 of the Convention, taken together with Articles 3, 8 and 13.

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Article 13 of the Convention provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14 states:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

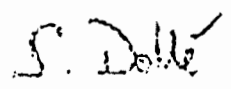
The Court observes that Articles 13 and 14 complement the other substantive provisions of the Convention and the Protocols. They have no independent existence since they have effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. Although the application of Articles 13 and 14 do not necessarily presuppose a breach of any other provision of the Convention and Protocols - and to this extent Articles 13 and 14 are autonomous -, there can be no room for their application unless the facts at issue fall within the ambit of one or more of the other Articles of the Convention and Protocols (see the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985, Series A no. 94, § 71).

As for the complaint under Articles 3 and 8 taken in conjunction with Articles 13 and 14, the Court refers to its above-mentioned finding that the scope of the positive obligation under Articles 3 and 8 does not extend to the payment by the State of compensation for injuries caused by the criminal acts of private persons. It follows that the fact about which the applicant complains, namely the denial of compensation, does not fall within the scope of Articles 3 or 8, and that Articles 13 and 14 are not, therefore, applicable.

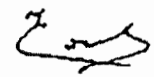
It follows that these complaints also are incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.



S. Dollé  
Registrar



J-P. Costa  
President

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V - EXPOSÉ DE LA REQUÊTE  
STATEMENT OF THE OBJECT OF THE APPLICATION

(Voir chapitre V de la note explicative)  
(See Part V of the Explanatory Note)

19. To secure a decision of judgment by the organs established under the Convention that the Applicant is the victim of a violation by the Government of Articles 3, 8, 13 and 14 and is entitled to compensation from the U.K. Government for the abuse she suffered at the hands of her step-father between 1967 and 1973. See paper attached for further details.

VI - AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ L'AFFAIRE  
STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

(Voir chapitre VI de la note explicative)  
(See Part VI of the Explanatory Note)

20. Le requérant a-t-il soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.  
Have you submitted the above complaints to any other procedure of international investigation or settlement?  
If so, give full details.

No.

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VII - PIÈCES ANNEXÉES  
LIST OF DOCUMENTS(PAS D'ORIGINAUX,  
UNIQUEMENT DES COPIES)  
(NO ORIGINAL DOCUMENTS,  
ONLY PHOTOCOPIES)

(Voir chapitre VII de la note explicative. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaires, et, en cas d'impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournés.)  
(See Part VII of the Explanatory Note. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)

21. a) Copy of CICA application  
b) Extract Conviction of George Alistair Strachan  
c) Opinion of Counsel relating to similar case of Mary Reilly  
d) Letter from CICA dated 11.4.97 refusing compensation  
e) Letter from CICA dated 16.9.97 refusing Review  
f) Letter dated 12.1.98 from Criminal Injuries Compensation Appeals Panel refusing Appeal.

VII - LANGUE DE PROCÉDURE SOUHAITÉE  
STATEMENT OF PREFERRED LANGUAGE

(Voir chapitre VIII de la note explicative)  
(See Part VIII of the Explanatory Note)

- 22. Je préfère recevoir la décision de la Commission en: anglais/français\*  
I prefer to receive the Commission's decision in: English/French\*

IX - DÉCLARATION ET SIGNATURE  
DECLARATION AND SIGNATURE

(Voir chapitre IX de la note explicative)  
(See Part IX of the Explanatory Note)

- 23. Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts et je m'engage à respecter le caractère confidentiel de la procédure de la Commission.  
I hereby declare that, to the best of my knowledge and belief, the information I have given in the application is correct and that I will respect the confidentiality of the Commission's proceedings.
- 24. S'il n'est pas indiqué clairement ci-après que le requérant désire garder l'anonymat à l'égard du public, il sera considéré qu'il n'y a pas d'objection à ce que son identité soit révélée:  
It will be assumed that there is no objection to the identity of the applicant being disclosed unless it is stated here in unambiguous terms that the applicant does object:

Lieu/Place ..... Date/Date .....

.....  
(Signature du requérant ou du représentant)  
(Signature of the applicant or of the representative)

\* Effacer ce qui ne convient pas.  
Delete as appropriate.