



European Court of Human Rights: Soering vs United Kingdom (July 7, 1989)

Stefano Stephan*

Human Rights Department, Strasbourg, Grand Est, France

Introduction

The story begins in the United States of America in 1985. Jens Soering is 18 years old. He is the son of a German diplomat and is in a relationship with Elizabeth Haysom, whom he met at university. The story changes in 1985 when Elizabeth's parents are found dead and the couple escapes to the UK a few days later, when investigators start targeting them. The United States was looking for them to target them for a double murder. The cause was the complicated relationship between Elizabeth and her parents, who did not appreciate Jens very much [1]. It is Elizabeth who would have dragged her husband into her family conflict, which ended dramatically. The use of the conditional tense in my sentences is not necessary since they were found guilty by American judges. Simply Jens Soering has regularly claimed his innocence. It should also be noted that the murders were quite savage: The father was stabbed 48 times and almost decapitated.

After traveling across Europe and Asia, the couple was finally arrested in London in April 1986, at which time Jens confessed to the double murder and began his strategy to avoid the Deaths Penalty in Virginia [2]. He sought to be tried in Germany for example, but above all to oppose his extradition to the United States.

And for this, he invokes before the European Court of Human Rights the risk of inhuman and degrading treatment that he could undergo because of the "anguish of death row".

Mr. Nicholls, Soering's lawyer at the time, explains why he did not try to argue the risk of Deaths Penalty for his client. At that time, the Convention accepted it, Article 2 of the European Convention of Human Rights Convention allowed it as an exception to the right to life, and all extradition treaties fully accepted this idea. Alternatively, there was the idea, which had already been pleaded before the European Commission of Human Right at the time by Mr. Collins, of addressing the death row syndrome, which causes potential inhuman and degrading treatment for Jens Soering. He added that Protocol 6 which provided for the abolition of the Deaths Penalty in time of war was not ratified by the UK in 1989; it took time for Protocol 6 to be ratified and to lead to a new vision of the right to life issue in the ECHR.

The idea is that the Soering decision opened a door to the extraterritoriality of the ECHR, that is to say to the possibility of applying it outside the European territory, because States are now obliged to verify whether when they make an extradition or even an expulsion (it has been extended since then), the country of landing of the person presents an inhuman and degrading treatment of torture. And it is also interesting, according to Mr. Collins, that States have tried to counter this position by raising a particular argument, which is that of undermining National Security, which would then have allowed extradition or expulsion anyway. But the European Court of Human Rights rejected this argument; it did not take it into account. So the position of principle remains that the HR Convention can have effects outside the European territory [3].

The lawyer says that there have been interesting effects of this judgment outside Europe, and in particular before Commonwealth jurisdictions that were able to finally decide to block the issue of Deaths Penalty with immediate consequences for hundreds of executions that

were planned and therefore did not take place, and in particular in cases that have been defended by this lawyer.

It is a series of "firsts" in this judgment: the first time there is a question of extraterritoriality that makes a State responsible for what happens outside the European territory. The first time that another country is involved in the procedure (Germany). The first time that an organization was allowed to intervene in the case (it was Amnesty International) [4]. And finally, the first but also the last time that a case is solved in only 12 months.

In 1989, the European Court of Human Rights decided that the United Kingdom could be held responsible for a violation of the Convention if it carried out an extradition or deportation without any guarantee on the Deaths Penalty.

Diplomatic negotiations lead to an agreement to avoid the torture of death row syndrome by the fact that Deaths Penalty will not be required for Jens Soering.

The petitioner was sentenced in 1990 to life imprisonment, while Elizabeth was sentenced to two 45-year prison terms for each of the murders.

Since his conviction, Jens Soering has changed his version of events: first he confessed, then he said he is innocent and that he was covering up for his wife Elizabeth who had addiction problems.

Documentaries and books were being released on the subject supporting this theory. Even Angela Merquel was getting involved to plead at least for her return to Germany [5].

In 2019, he is finally granted an early release at the age of 53, and is deported to Germany. Elizabeth is also released but deported to Canada, her home country.

For legal experts, the Soering ruling is remembered as the first to oblige States to verify the concrete situation in another country, outside the European territory, in case of extradition or expulsion. It is this extra territoriality that is regularly mentioned. In addition, it is a virtual violation: the Court recognizes that there would be a violation in case of extradition. A conditional decision for a virtual violation that is now widely applied to the deportation of foreigners, for example in the case of Afghans since the summer of 2021.

For the Court, I quote: "the effectiveness of the guarantee provided by this text is at stake, given the seriousness and irreparable nature of the suffering allegedly risked".

*Corresponding author: Stefano Stephan, Human Rights Department, Strasbourg, Grand Est, France, Tel: 33768707659; E-mail: stefano.stephan@gmail.com

Received: 27-Dec-2021, Manuscript No. JCLS-22-51274; Editor assigned: 29-Dec-2021 PreQC No. JCLS-22-51274 (PQ); Reviewed: 12-Jan-2022, QC No. JCLS-22-51274; Revised: 17-Jan-2022, Manuscript No. JCLS-22-51274 (R); Published: 24-Jan-2022, DOI: 10.4172/2169-0170.1000308

Citation: Stephan S (2022) European Court of Human Rights: Soering vs United Kingdom (July 7, 1989). J Civil Legal Sci 11: 308.

Copyright: © 2022 Stephan S. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

References

1. Ascarelli T (1959). *Obbligazioni Pecuniarie (Geldschulden) (Artt. 1277–1284): Commentario del Codice Civile a cura di Antonio Scialoja e Guisepe Branca*. Nicola Zanichelli, Bologna, und Soc. Ed. del Foro Italiano. JSTOR NY 25:343-346.
2. Barcellona M (1971). *Trattato della responsabilità civile*. Milano UK:1- 20.
3. Carraciolo A, Cesareo F (2017). *Astreintes and Italian Law*, in *Civil Procedure Review* (2191-1339). Civ Pro rev UK 8:45-72.
4. De Cupis A (1985). *Sul tema del danno e del risarcimento*. Milano UK:320-323
5. Betunio M (2017). *Punitive damages*. LUISS Eur Pri Law EU: 1-138.