



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

SECOND SECTION

CASE OF DUFF AND BBC SCOTLAND v. THE UNITED KINGDOM

(Application no. 8562/19)

JUDGMENT

STRASBOURG

13 October 2026

This judgment is final but it may be subject to editorial revision.

In the case of Duff and BBC Scotland v. the United Kingdom,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Péter Paczolay, *President*,

Oddný Mjöll Arnardóttir,

Hugh Mercer, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 8562/19) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 6 February 2019 by a British national, Mr Steven Duff, who was born in 1975 and lives in Aberdeen, and by the British Broadcasting Corporation in Scotland (BBC Scotland), both represented before the Court by Ms R. McInnes, of the Legal Department of BBC Scotland, in Glasgow;

the decision to give notice of the application to the United Kingdom Government (“the Government”), represented by their Agent, Ms A. Sornarajah, of the Foreign, Commonwealth and Development Office;

the parties’ observations;

the decision to reject the unilateral declaration presented by the Government;

Having deliberated in private on 22 September 2026,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

I. THE FACTS

1. The application concerns the decision to close a court and thereby to exclude the first applicant, a journalist employed by the second applicant, from observing court proceedings.

2. On 10 August 2018 a hearing took place at Aberdeen Sheriff Court. At the outset of the hearing, one of the parties made an unopposed request that the court order the hearing to be conducted in closed court. The sheriff granted the request. The court was accordingly cleared and the first applicant, who was present in court, was asked to leave.

3. The applicants unsuccessfully sought to obtain information about the hearing from the only person allowed to remain in court, namely an employee of the party which had sought and been granted the order closing the court. The first applicant thereafter sought information from the court officers, but none was given. He then sought information from the legal representatives and again none was provided.

4. In their written observations the Government advised the Court, after having made inquiries, that the sheriff had informed them that she had not

been aware that there were members of the press in attendance when the application had been made to her for an order to close the court, and had not noticed whether anyone was present on the public benches in the court; she had not made any enquiry about whether members of the press were present and had no recollection of objections being made by any person; and at the time of the hearing the first applicant was not a person she would have recognised.

II. RELEVANT DOMESTIC LAW

5. The law of Scotland recognises the principle of open justice pursuant to which court proceedings are conducted in public unless provision is made to the contrary. In Scotland, the origin of the principle is the Court of Session Act 1693, which continues to govern Scotland’s superior civil court, the Court of Session. The principle was recently the subject of a judgment of the Court of Session, which explained its operation (*MH v. Mental Health Tribunal for Scotland* 2019 SC 432). The power to regulate the court’s practice and proceedings is an aspect of the sheriff’s inherent jurisdiction and the same principles concerning open justice described in *MH v. Mental Health Tribunal for Scotland* apply in the Sheriff Court (*Sloan v. B* 1991 SC 412).

6. The power to exclude the public from hearings requires a compelling reason (*Scott v. Scott* [1913] AC 417). The special status of journalists and the press and the importance of access to court proceedings for journalists is recognised by the common law. The exclusion of the media from court proceedings should occur in the “rarest of circumstances” (see *MH v. Mental Health Tribunal for Scotland*, cited in full above).

7. The media has no legal right to make submissions when a party applies for a hearing to be held in private (*Executor of HRH Prince Philip, Duke of Edinburgh, decd v. Attorney General* [2023] 1 WLR 1193). A decision to exclude the media from a court hearing may be challenged by way of a petition for judicial review in the Court of Session.

III. COMPLAINTS

8. The applicants complain under Article 10 of the Convention, alone and in conjunction with Article 13, that the closing of the court resulted in a violation of their right to receive and impart information about the matters raised in the hearing and about the absence of any mechanism for challenging the application to close the court before the order was made.

THE COURT’S ASSESSMENT

I. ADMISSIBILITY

9. The Government submitted that the applicants ought to have lodged a petition for judicial review of the sheriff’s decision in the Court of Session, as part of which they could have requested interim orders to prevent the sheriff from proceeding with the hearing on 10 August 2018 pending review. Even if the judicial review petition might not have prevented a violation of the applicants’ rights from taking place, it was nonetheless an effective remedy. A declaration by Scotland’s superior court and involving a public statement as to what was required of the sheriff as a matter of law would have provided adequate redress for the violation that had occurred.

10. The exhaustion rule is based on the assumption, reflected in Article 13 of the Convention, that there is an effective remedy available in the domestic system in respect of the alleged breach (*Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The applicants argued that there was no effective remedy available to them because the possibility of judicial review offered no realistic prospect of preventing the closure of the court. They argued that where, as here, the possibility of reporting on the proceedings will be permanently lost if the court is closed, only an *ex ante* remedy allowing submissions to be made and examined by the court could be considered effective.

11. In the present case, the applicants had no legal right to make submissions on the request to close the court (see paragraph 7 above). As a result, the sheriff closed the court without, apparently, turning her mind at all to the need to respect the principle of open justice and to balance any Article 8 rights at stake against the Article 10 rights of the applicants (see paragraph 4 above). The applicants’ exclusion from court rendered it impossible for them to report on the judicial proceedings and had irreversible effects since their ability to report on proceedings that they had been unable to attend could not be restored by any future ruling that their exclusion was incompatible with Article 10. They were, moreover, unable to obtain any information on the proceedings from other sources (see paragraph 3 above).

12. The nature of the right at stake has implications for the type of remedy the State is required to provide in order for it to amount to an effective remedy under Article 13 (*Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 191, ECHR 2008 (extracts)). The Court has repeatedly stated that freedom of expression constitutes one of the essential foundations of a democratic society and that, in that context, the safeguards guaranteed to the press are particularly important (*MacKay and BBC Scotland v. the United Kingdom*, no. 10734/05, § 32, 7 December 2010). It has underlined the essential role of the press as “public watchdog” and its task of imparting information and ideas on all matters of public interest (*Von Hannover v. Germany* (no. 2) [GC],

nos. 40660/08 and 60641/08, § 102, ECHR 2012). In assessing procedural safeguards to protect from arbitrary interferences with Article 10 of the Convention, the Court has considered relevant the involvement in the impugned decision of those whose rights and interests are likely to be affected; and whether the law required an impact assessment of the measures prior to their implementation (see, in the context of the blocking of a website, *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, § 40, 23 June 2020). The Court has further held that a remedy which will not bear fruit in sufficient time cannot be regarded as an effective remedy (see *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 47, Series A no. 222). It considers that, having regard to what was at stake for the applicants, the notion of an effective remedy implied the possibility to make submissions on the request to close the court and obtain a ruling before the hearing itself took place (see, *mutatis mutandis*, *Bączkowski and Others v. Poland*, no. 1543/06, § 81, 3 May 2007, and *MacKay and BBC Scotland*, cited above, §§ 32-33).

13. The Court is of the view that it would have been practically impossible in this case for the applicants to have obtained an interim order of the Court of Session in judicial review proceedings in time to prevent the sheriff's order closing the court being made. The Government themselves accepted that such a prospect was highly unlikely. That being the case, judicial review proceedings would at best have offered them the possibility to challenge the lawfulness of their exclusion from the court after the full effect of exclusion had occurred. The Court is therefore not persuaded that judicial review proceedings, being of a *post-hoc* character, could have provided adequate redress in respect of the alleged violations of the Convention (see, *mutatis mutandis*, *Bączkowski and Others*, cited above, §§ 82-84, and *Alekseyev v. Russia*, nos. 4916/07 and 2 others, §§ 98-99, 21 October 2010). They therefore did not constitute an effective domestic remedy that the applicants were required to exhaust (see also, *mutatis mutandis*, *MacKay and BBC Scotland*, cited above, § 33). The Government's objection that the applicants have failed to exhaust domestic remedies is accordingly rejected.

14. The Court moreover considers that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

15. The Government conceded that the sheriff's order to close the court constituted an interference with the applicants' freedom of expression, in particular their right to receive and impart information, within the meaning of Article 10 § 1 and that the interference was not in accordance with the law because the sheriff had failed to apply the law in their particular case.

16. The Court accepts that the sheriff's order interfered with the applicants' freedom of expression and that the apparent failure of the sheriff to consider whether there were grounds for exceptionally excluding the applicants from the hearing (see paragraphs 5-6 above) means that the applicants' exclusion from court was not prescribed by law. There has accordingly been a violation of Article 10 of the Convention in this case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

17. The applicants argued that an effective remedy required the availability of a procedure allowing submissions to be made prior to an order closing the court. They considered that the procedure available in respect of reporting restrictions could be extended to cover court closures. The Government's position was that it would be impractical and unnecessary, in the context of the efficient conduct of court business, for the reporting restrictions procedure to be applied to court closures. In their view such a procedure would prevent the court from taking practical steps to regulate its business in an effective way. They maintained that the remedy of judicial review constituted an effective remedy for the applicants.

18. Article 13 requires the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (*Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 217, 25 June 2019, and *Bączkowski and Others*, cited above, § 79). The Court has explained that the notion of an effective remedy in this case implied the possibility to make submissions on the request to close the court and to obtain a ruling before the hearing took place (see paragraph 12 above). It therefore found that the possibility of seeking judicial review of the sheriff's decision did not constitute an effective remedy that the applicants were required to exhaust in the present case (see paragraph 13 above). As no other potential remedy has been identified by the Government, there has accordingly been a violation of Article 13 of the Convention, in conjunction with Article 10.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage and 64,240.50 pounds sterling (GBP), exclusive of tax, jointly in respect of costs and expenses incurred before the domestic courts and before the Court.

20. The Government argued that the finding of a violation constituted sufficient just satisfaction. They further contended that the costs claimed were excessive.

21. In the circumstances of the present case, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

22. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 25,000 jointly covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention, in conjunction with Article 10;
4. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months, the sum of EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Péter Paczolay
President