



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

THIRD SECTION

CASE OF C.G. v. THE UNITED KINGDOM

(Application no. 43373/98)

JUDGMENT

STRASBOURG

19 December 2001

FINAL

10/07/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of C.G. v. the United Kingdom,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June and 28 November 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 43373/98) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, C.G. (“the applicant”), on 24 July 1998.

2. The President of the Chamber acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged that she had been denied a fair hearing on account of the judge’s conduct at her criminal trial on charges of theft. In particular, she drew attention to interruptions of her counsel at various stages of the trial proceedings and deficiencies in the judge’s summing up to the jury.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 11 April 2001 the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 26 June 2001 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr C.A. WHOMERSLEY, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr D. PANNICK QC,	
Mr M. SHAW,	<i>Counsel,</i>
Ms N. SAMUEL, Home Office,	
Ms G. HARRISON, Home Office,	<i>Advisers;</i>

(b) *for the applicant*

Mr A.J. ENGEL,	<i>Counsel,</i>
Mr G.B. BARRETT,	<i>Adviser.</i>

The Court heard addresses by Mr Engel and Mr Pannick.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

9. For several years until January 1996 the applicant was employed as an accounts clerk at a fruit and vegetable wholesalers. It was her job to bank cash and cheques. In January 1996 she resigned after telling the company secretary ("S.") that there was a shortfall in the accounts which had been caused by the theft in November 1995 of two bags containing GBP 3,700, which she said had been taken out of her possession at some time between her getting the money ready for banking at her place of work, visiting a local public house at lunchtime, and arriving at the bank. She said that she had not reported the theft earlier because she was afraid she would be held responsible and lose her job, and that she had made efforts to meet the shortfall from her own money, but that the strain had become too much. S. subsequently went through the accounts from 1 October 1995 and discovered a shortfall of approximately GBP 2,900. He also discovered that since October 1995 the applicant had been consistently banking the takings late and occasionally failing to bank all the cash received.

B. The applicant's trial, conviction and appeal

10. The applicant was charged with stealing GBP 2,905.21. She pleaded not guilty and, in April 1997, following a three-day trial in a Crown Court before a judge and jury, she was convicted of theft and sentenced to two years' probation and one hundred hours' community service. She was 27 years of age at the time and had no previous convictions.

11. The applicant appealed against conviction. Her grounds of appeal were, *inter alia*, that the judge had made frequent interruptions and persistently hectored defence counsel, thus depriving the applicant of a fair trial. In particular, it was submitted that during the defence counsel's cross-examination of the main prosecution witness, S., the judge had intervened so frequently that defence counsel was prevented from testing the accuracy of a schedule of banking payments prepared by S. which was the basis of the prosecution case, or from developing possible lines of defence, such as that the loss had occurred prior to the commencement date in the schedule. In addition, the applicant complained that the judge had constantly interrupted her examination-in-chief, making it impossible for her to give her evidence in a coherent manner, and had hectored her counsel to such an extent that he had felt unable to continue and had curtailed the examination. The grounds of appeal referred to the transcript of the trial which showed interventions by the judge on almost every page of S.'s cross-examination and on twenty-two of the thirty-one pages of the applicant's examination-in-chief.

12. In February 1998 the Court of Appeal dismissed the applicant's appeal against conviction, finding as follows:

"The principal ground relied upon by Mr Engel, who appeared at trial and also on this appeal before us, was that the trial was unfair (and he does not mince his words) because of the attitude of the learned judge from the moment that he began to cross-examine [S.] through to the time when the appellant was giving her evidence in-chief, throughout her cross-examination, and even up to the moment when he was addressing the jury on her behalf at the close of the evidence. He says that there were frequent interruptions and that on balance they were hostile to the defence case being presented. They had the effect of disturbing his concentration and diverting the attention of the jury and also the attention of the appellant who was thereby unable to present a coherent and consecutive account of what had happened.

We find that there is some substance in those criticisms. It appears from a reading of the transcripts that there were frequent interruptions at the start of the appellant's evidence. In our view those interruptions, though no doubt well intentioned, may well have had the untoward and unfortunate effect of putting the appellant out of her stride and also, as seems to have been the case and as Mr Engel tells us, of disconcerting him. Likewise, so far as the evidence of [S.] is concerned, it does appear that, probably through a misunderstanding of the points that Mr Engel was seeking to make, the learned judge did interrupt cross-examination far more often than could be justified on any view. We are not impressed with the complaint which is made about the interruption which occurred during Mr Engel's speech to the jury. That was simply to

clear one matter up; it could have occupied no more than about ten seconds out of a speech lasting 45 minutes or thereabouts, we are told. That complaint is unjustified.

We have to consider that ground and the criticisms which we feel have been made good in the context of the case as a whole. But we turn from that first ground of appeal to the second, which is to the effect that the summing-up was defective

This was a very short summing-up. It might be said that it was somewhat laconic. But we have to consider whether or not there was a sufficient reference to the defence which was being put forward. In essence the learned judge dealt with the defence at pages 9 and 10 of the transcript. He said:

‘... the broad case is the defendant says that the money was taken from her, I think it is fair to say now in October rather than November, as she originally said, and that she believes now it may well have been taken from [her place of employment], and she seeks to support that by saying there have been other small thefts [there], which suggests somebody dishonest was there who might have taken this amount.’

... That was a very short way of putting the defence forward. It does not deal in great detail with the points which Mr Engel had been attempting to advance both in the course of the cross-examination and in his speech. To that extent the criticism is justified.

It is a further criticism that the judge erred in withdrawing from the jury a main line of defence to the effect that the loss may have occurred prior to October 1995, but we find that that ground of appeal is misconceived. The prosecution case was quite simply that the money must have gone after 1 October because it was the reconciliation of the cash received, with the amounts paid into the bank, which produced the deficiency of GBP 2,900. No part of that sum could have been stolen before 1 October.

Further it is said that the judge wrongly directed the jury that there was no evidence of there being a second paying-in book in use at the time, and the complaint is made that the appellant said that there was (in conflict, it has to be said, with the evidence of [S.]). This was a mistake on the judge’s part, so it appears, and something which we have to take into account.

It is then said that the judge erroneously implied that defence counsel had failed to suggest to [S.] that there was more than one paying-in book, and once again it appears that the judge was in error about that. So far as we have been able to see, he was not corrected subsequently.

Next it is said in further criticism of the summing-up that the judge told the jury that the appellant never made the suggestion that the money might have been stolen before she left her place of work on the day in question. That, too, was an error, but it was corrected by [prosecution counsel] at the close of the summing-up and in itself could not support a basis for quashing the conviction. ...

As we have observed, there are criticisms which can be made of the manner in which this trial was conducted. It does seem to us that on occasions this very experienced and highly regarded circuit judge (now retired) did enter the arena, sometimes for legitimate reasons and at other times perhaps without justification. It does seem to us also that counsel found himself incommode and disconcerted by those interventions and interruptions. Counsel have to possess (and if they do not have

them they have to grow) rather thick skins. There was never an occasion where the learned judge in the course of trial, so it appears to us, made a ruling to the effect that Mr Engel should not continue with the line of defence that he was attempting to develop either in cross-examination or through his own witness. It appears to us that perhaps Mr Engel was on this occasion a trifle oversensitive. That does not, of course, detract from the validity of the criticisms – some well-founded, some not – in the round. In the end we have to ask ourselves whether or not we think this conviction was unsafe. That is the test we have to apply.

The case was a strong one; indeed the evidence was overwhelming. The appellant on her account to the police and to the jury was admitting that a substantial sum of money had gone missing whilst it was in her possession. She had, by means of late banking, taken steps to cover up the deficiency. We have not a moment's hesitation in saying that, so far as we are concerned, the conviction was entirely safe. Notwithstanding the criticisms which we have found to be made out as to the manner in which the trial was conducted, this appeal will be dismissed."

II. RELEVANT DOMESTIC LAW

A. Criminal Appeal Act 1968 as amended by the Criminal Appeal Act 1995

13. Section 2(1) of the Criminal Appeal Act 1968 ("the 1968 Act"), as amended by the Criminal Appeal Act 1995 ("the 1995 Act"), provides a single, composite right of appeal against a criminal conviction. It states that the Court of Appeal:

"(a) shall allow an appeal against conviction if they think that the conviction is unsafe; and

(b) shall dismiss an appeal in any other case."

The broad intention behind this provision was summarised by the then Lord Chief Justice, Lord Bingham, in *R v. Graham and Others* ([1997] vol. 1 Criminal Appeal Reports p. 302 [Court of Appeal]), when he said:

"This new provision.....is plainly intended to concentrate attention on one question: whether, in the light of any arguments raised or evidence adduced on appeal, the Court of Appeal considers a conviction unsafe. If the Court is satisfied, despite any misdirection of law or any irregularity in the conduct of the trial or any fresh evidence, that the conviction is safe, the Court will dismiss the appeal. But if, for whatever reason, the court concludes that the appellant was wrongly convicted of the offence charged, or is left in doubt whether the appellant was rightly convicted of that offence or not, then it must of necessity consider the conviction unsafe. The Court is then subject to a binding duty to allow the appeal."

14. The scope of the "safety test" was discussed by Lord Bingham C.J. in his judgment in *R v. Criminal Cases Review Commission, ex parte*

Pearson [2000] 1 Criminal Appeal Reports 141 (Court of Appeal) (after the hearing of the applicant's appeal), where he stated:

"The expression 'unsafe' in section 2(1)(a) of the 1968 Act does not lend itself to precise definition. In some cases unsafety will be obvious, as (for example) where it appears that someone other than the appellant committed the crime and the appellant did not, or where the appellant has been convicted of an act that was not in law a crime, or where a conviction is shown to be vitiated by some serious unfairness in the conduct of the trial or significant legal misdirection, or where the jury verdict, in the context of other verdicts, defies any rational explanation. Cases however arise in which unsafety is much less obvious: cases in which the Court, although by no means persuaded of an appellant's innocence is subject to some lurking doubt or uneasiness whether an injustice has been done If, on consideration of all the facts and circumstances of the case before it, the Court entertains real doubts whether the applicant was guilty of the offence of which he has been convicted, the Court will consider the conviction unsafe."

15. This passage was subsequently cited by the Court of Appeal in the case of *R v. Davis, Rowe and Johnson* [2001] 1 Criminal Appeal Reports 8, where Lord Justice Mantell, delivering the judgment of the court, stated that:

"The following is not intended to be an exhaustive statement of the principles involved. We simply extract the following. The Court is concerned with the safety of the conviction. A conviction can never be safe if there is doubt about guilt. However, the converse is not true. A conviction may be unsafe even where there is no doubt about guilt but the trial process has been 'vitiated by serious unfairness or significant legal misdirection' ... Usually it will be sufficient for the Court to apply the test ... which, as adapted by [counsel for the Crown], might read:

'assuming the wrong decision on law or the irregularity had not occurred and the trial had been free from legal error, would the only reasonable and proper verdict have been one of guilty?'"

Later in his judgment, Lord Justice Mantell stated that:

"We are satisfied that [the questions of 'fairness' and 'safety'] must be kept separate and apart. The E.C.H.R. is charged with inquiring into whether there has been a breach of a Convention right. This Court is concerned with the safety of the conviction. That the first question may intrude upon the second is obvious. To what extent it does so will depend upon the circumstances of the particular case. We reject, therefore, [counsel for Johnson]'s contention that a finding of a breach of Article 6 (1) by the E.C.H.R. leads inexorably to the quashing of the conviction. Nor do we think it helpful to deal in presumptions. The effect of any unfairness upon the safety of the conviction will vary according to its nature and degree."

B. Case-law on judicial intervention and misconduct

16. The subject of judicial interventions at trial has arisen in a number of appeals. In *R v. Hulusi* (1973) 58 Criminal Appeal Reports 378 (Court of Appeal) the appellants complained that the conduct of the trial judge had made it impossible for counsel to conduct the case for the defence

effectively. The judge had in particular made frequent interruptions to the examination-in-chief of the appellants and their witnesses. Lord Justice Lawton stated that:

“It is a fundamental principle of an English trial that, if an accused gives evidence, he must be allowed to do so without being badgered and interrupted. Judges should remember that most people go into the witness-box, whether they be witnesses for the Crown or for the defence, in a state of nervousness. They are anxious to do their best. They expect to receive a courteous hearing, and when they find, almost as soon as they get into the witness-box and are starting to tell their story, that the judge of all people is intervening in a hostile way, then, human nature being what it is, they are liable to become confused and not to do as well as they would have done had they not been badgered and interrupted.”

The court concluded that the judge must have given the impression that he was cross-examining on the evidence-in-chief as it was being given and that defending counsel was at times driven off-course by the judge’s interventions. The convictions were accordingly quashed.

17. In *R v. Ahmed* (unreported, 3 March 1995, Court of Appeal), Lord Justice Glidewell, delivering the judgment of the court, said that interventions by a judge in a criminal trial were generally undesirable for a number of reasons: (i) they might unsettle a witness; (ii) they might prevent counsel from pursuing a legitimate point; (iii) they might belittle counsel for the defence; and (iv) they might indicate a pre-conceived view by the judge. However, on the facts of the case, despite the inappropriate interventions by the judge, the court was satisfied that counsel for the defence had not been prevented from making the points he wished to make and that the conviction was not “unsafe or unsatisfactory” (which reflected the test contained in section 2 of the 1968 Act at that time). The appeal was therefore dismissed.

18. The *Ahmed* case was cited by the Court of Appeal in the context of the new test under the 1995 Act in *R v. Roohi (Kambiz)* (unreported, 11 July 1997). The court concluded that the Recorder conducting the trial had intervened “far too often” during the questioning of expert witnesses and that various of the undesirable consequences identified by Glidewell L.J. had followed. In all the circumstances, the court concluded that the verdict was unsafe on the basis that the appellant had not received a fair trial.

19. In *R v. Frixou* [1998] Criminal Appeal Reports 352 (Court of Appeal), the appellant complained that the Recorder had intervened with his examination-in-chief at trial to such an extent that he had been denied a fair trial. The court upheld the complaint and allowed the appeal, finding that the appellant had been effectively deprived of an opportunity to put his whole case before the jury in an ordered and structured form before that case was tested by the rigours of cross-examination.

20. Similarly, in *R v. Roncoli* [1998] Crim. LR 584 (Court of Appeal), the court found that the trial judge’s hostile interruptions of the appellant’s examination-in-chief had effectively constituted a cross-examination and

concluded that the jury was bound to have thought that the judge was of the view that the appellant had no defence. The court stated that the fact that the prosecution case was a strong one did not deprive the appellant of his right to be tried fairly and thus allowed the appeal on the basis that the conviction was unsafe.

21. All of the cases cited at paragraphs 16 to 20 above were decided by the Court of Appeal before the appeal in the applicant's case.

22. In *R v. Kartal and others* (unreported, 15 July 1999, Court of Appeal), Lord Justice Clarke, giving the judgment of the court, commented as follows:

“The key principle is that every person is entitled to a fair trial. That general principle is enshrined in Article 6 of the European Convention on Human Rights. This appeal involves a particular application of that general principle. The particular principles are summarised in ...Archbold 1999... under the heading ‘Conduct of Trial Judge’:

‘Interventions by the judge during a trial will lead to a quashing of a conviction: (a) when they have invited the jury to disbelieve the evidence for the defence in such strong terms that the mischief cannot be cured by the common formula in the summing-up that the facts are for the jury, and that they may disregard anything said on the facts by the judge with which they did not agree; (b) when they have made it impossible for defending counsel to do his duty; (c) when they have effectively prevented the defendant or a witness for the defence from telling his story in his own way’ (...).

We have seen a transcript of the whole trial except for the opening and counsel's closing submissions to the jury. The transcript shows that the judge intervened on a considerable number of occasions during the evidence. He did so in particular during the cross-examination of prosecution witnesses by defence counsel. It is clear from the transcript that he did so for a number of different reasons. For example, he took the view that counsel were cross-examining the witnesses at excessive length and that they were inclined to make comments to witnesses when they should have been asking questions.

It is the duty of counsel (...) both to cross-examine witnesses firmly, fairly and with reasonable dispatch and to avoid making comments which should be confined to submissions. It is equally the responsibility of the judge to do his or her best to ensure that counsel does not overstep the mark in these or indeed in other respects. Moreover, we see no reason why appropriate comments should not be made by the judge on these topics in the presence of the jury.

On the other hand, as we have already said, it is of the utmost importance that every defendant should have a fair trial and indeed that he must be seen to be having a fair trial. It is therefore important that any rebuke to counsel should be delivered in measured tones, especially if it is done in the presence of the jury, and nothing should be done which might have any adverse impact upon the fair presentation of the defendant's case or which might lead the jury to conclude that the judge was unfairly prejudiced against the defendants (...).

It is submitted on behalf of the appellants that in this case on a number of occasions the judge unfortunately treated defence counsel in such a way as to make it difficult for them to put their client's case fairly to the jury, and was such as might lead the jury to conclude that the judge was prejudiced against both defence counsel and the defendants.

We have regretfully reached the conclusion that there is considerable force in these submissions. (...)

(H)aving considered the transcript as a whole we have reached the conclusion that in the light of the judge's approach to defence counsel and his frequent interruptions during the cross-examination of prosecution witnesses, none of which favoured the defence and many of which tended to favour the prosecution, together with his attitude to part, at least, of the defence case, these defendants did not receive a fair trial. An impartial observer at that time would, in our opinion, clearly have reached that conclusion. Yet, as we have already said, each defendant has a right to a fair trial. (...)

(W)e are quite unable to say that these verdicts are safe given the fact that these appellants did not receive a fair trial."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant contended that the trial judge's constant interventions and hectoring of her counsel, together with the Court of Appeal's decision that the conviction was safe, deprived her of a fair trial, in breach of 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 and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

A. Arguments of the parties

1. The applicant

24. The applicant complained that the trial judge made improper interruptions and comments at various stages of the proceedings. The first interruptions took place in the course of her counsel's cross-examination of the main prosecution witness, S. The applicant highlighted various points at which the judge butted in on her counsel's questions, and drew attention to the Court of Appeal's conclusion that the judge interrupted the cross-examination "far more often than could be justified on any view". She

contended that the judge had effectively taken over the cross-examination and in so doing had prevented her counsel from pursuing lines of defence to the effect that the schedule of banking payments prepared by S. was inaccurate and that the money concerned had gone missing before the schedule had been prepared.

25. The applicant's examination-in-chief followed, and she again highlighted various interruptions by the judge which, she maintained, prevented her from putting her version of events fairly to the jury. She contended that her position was particularly vulnerable due to her relatively young age at the time of the trial and the fact that she had never before found herself in court facing criminal charges. She indicated that the judge bullied her counsel by taking over conduct of the examination at a very early stage, leading her counsel to request an adjournment to allow him to re-gather his thoughts before continuing. Even then, she said, the judge continued interrupting her counsel at various points throughout the remainder of the examination. She drew attention to the Court of Appeal's view that the interruptions, "though no doubt well intentioned, may well have had the untoward and unfortunate effect of putting the appellant out of her stride and also, as seems to have been the case and as [the applicant's counsel] tells us, of disconcerting him".

26. The applicant also referred to the judge's interruption of her counsel's closing speech to the jury which, she said, is a very rare occurrence in English criminal proceedings. She considered that the judge should have awaited his own summing up before making any remarks. She cited extracts from the Court of Appeal's judgment which also criticised aspects of the judge's summing up.

27. All in all, the applicant asserted that the whole trial process had been vitiated by the judge's conduct and "very extreme" interruptions. She stated that she had thus suffered greater unfairness at her trial than had the applicants in the previous cases of the *Edwards v. the United Kingdom* judgment of 16 December 1992, Series A no. 247-B, *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95 ECHR 2000-II and *Condrón v. the United Kingdom*, ECHR 2000-V. She highlighted that the Court of Appeal reached its decision only on the basis of a partial transcript of the trial and without the benefit of hearing or seeing the witnesses.

28. The applicant pointed to differences between the test of "safety" as applied by the Court of Appeal under the 1968 Act, as amended, and the test of "fairness" as applied by this Court under Article 6 § 1 of the Convention. She cited the *Condrón* case (paragraph 65), which recognised that distinction at the Convention level, and said that the distinction had also been recognised at the domestic level by the Court of Appeal in the above-mentioned *Davis, Rowe and Johnson* case. She argued that there was no justification for the Court of Appeal finding the conviction "safe" at the same time as, she says, concluding that the trial was unfair. As a result, she

maintained that the appeal proceedings did not remedy the defects at trial so as to make the proceedings as a whole fair.

2. The Government

29. The Government submitted that the applicant's trial before the judge and jury was fair for the purposes of Article 6 § 1. They noted, in respect of the applicant's counsel's cross-examination of S., that the Court of Appeal did not consider that any of the judge's interruptions were malevolent. Rather, they seemed to have been caused by a misunderstanding between the judge and the applicant's counsel. In so far as the examination-in-chief of the applicant was concerned, they pointed out that the trial judge's interruptions were more frequent at the start of the examination and that, thereafter, the applicant was given a proper opportunity to tell her story. They highlighted also that the judge's interruption of defence counsel's closing speech was intended to clarify one matter, and occupied no more than ten seconds of a speech lasting approximately forty-five minutes.

30. They indicated that, although the judge perhaps interrupted more often than ideally he should have done, the Court of Appeal found the applicant's counsel to have been oversensitive to those interruptions. In particular, they stated that no relevant evidence was excluded as a result of the judge's conduct, and pointed out that the judge did not misdirect the jury as to the law. Furthermore, the applicant was not denied the opportunity to develop her lines of defence in relation to the schedule of payments prepared by S. since the Court of Appeal recognised that the schedule had been shown to be inaccurate and the trial judge ruled that the argument that the theft might have occurred prior to the period covered by the schedule was impossible to sustain.

31. The Government stated that it was important to put the defects in the trial proceedings into perspective. In particular, they submitted that Article 6 cannot be breached simply because, in the course of a three day trial, the judge had interrupted the applicant's counsel on some occasions. They highlighted the fact that the jury's verdict was unanimous and prompt, and that the Court of Appeal described the evidence against the applicant as "overwhelming".

32. Even if the trial itself was unfair, the Government submitted that there had been no breach of Article 6 considering the proceedings as a whole because any defects at first instance were remedied on appeal. They referred to the above-mentioned Edwards case, where the Court of Appeal was able to consider evidence withheld from the defence by the prosecution at trial and, having heard representations from the defendant, to conclude that the fresh information did not affect the jury's verdict. They pointed out that the Court held that the proceedings as a whole were fair even though the Court of Appeal had not heard the evidence given at trial and the jury had not heard the withheld evidence. By contrast, in the above-mentioned

Rowe and Davis case, the Government recalled that the Court held that the appeal proceedings did not remedy defects at trial because previously undisclosed evidence was only examined, and dismissed, by the Court of Appeal in the absence of any appearance or representations on behalf of the defence. They equated the appeal proceedings in the present case more closely to those in the *Edwards* case, and added that it is easier for the Court of Appeal to remedy defects caused at trial by a judge's interruptions, since the gravity and frequency of such interruptions is readily identifiable from the transcript, than it is to remedy proceedings where relevant evidence has been excluded from the judge and jury.

33. The Government also referred to the above-mentioned *Condron* case, where it was confirmed that defects during trial can be remedied by a subsequent procedure before a court of appeal. They added that the case was distinguishable on the facts from the applicant's case, since it concerned a defective direction by the trial judge which had adverse implications for the defendant's "fundamental" right to silence. The Court of Appeal could not assess the impact which such defects may have had upon the jury's verdict at trial.

34. The Government submitted that the principles applied by the domestic courts when applying the "safety test" under the 1968 Act, as amended by the 1995 Act, are entirely consistent with the requirements of Article 6 of the Convention. They referred to the case-law of the Court of Appeal (see paragraphs 16 to 20 above), and emphasised that, although the domestic courts have explained that a conviction can never be safe if there is doubt about guilt, they have also said that it might be unsafe even if there is no such doubt but there has been some serious unfairness or irregularity in the trial process. They added that domestic case-law also shows that there are cases where unfairness at trial does not lead to the quashing of a conviction because the rights of the defence can be secured by the appeal. The Government said that the applicant's appeal had been unsuccessful because she had failed to satisfy the Court of Appeal that the defects identified had made her trial unfair.

B. The Court's assessment

35. The central question raised is whether the nature and frequency of the trial judge's interventions, combined with the deficiencies found by the Court of Appeal in his summing-up, were such as to render the proceedings against the applicant unfair. The Court recalls that, in determining issues of fairness of proceedings for the purposes of Article 6 of the Convention, the Court must consider the proceedings as a whole, including the decision of the appellate court (see, for example, the above-mentioned *Edwards* judgment, § 34).

36. The Court notes that, in the present case, the applicant's primary ground of appeal in the domestic proceedings was that the trial was unfair because of the excessive and hostile interventions by the trial judge and that this complaint was examined in detail by the Court of Appeal which, after considering those parts of the transcript of the evidence and summing up particularly relied on by the applicant as demonstrating unfairness, rejected the applicant's appeal. The Court considers that in these circumstances particular weight should be attached to the assessment of the national appellate court, which because of its knowledge and experience of the conduct of jury trials, is especially well placed to determine whether a trial judge's handling of a trial resulted in unfairness. It is true that, while holding that there was "some substance" in the criticisms made of the conduct of the trial judge, the Court of Appeal did not in terms reach a conclusion as to whether such conduct had resulted in unfairness, finding instead that the applicant's conviction was not "unsafe". It is true, too, that in its above-mentioned *Condron* judgment (at paragraph 65), the Court observed that the question whether or not the rights of defence under Article 6 of the Convention were secured in any given case could not be assimilated to a finding that a conviction was "safe" in the absence of any inquiry into the issue of fairness.

However, the Court notes not only that such an inquiry was at the heart of the appeal in the present case but that the case-law of the Court of Appeal demonstrates the breadth of the "safety" test in the context of a complaint that judicial interventions rendered a trial unfair. It is apparent from that case-law that, even in cases where the evidence against a defendant is strong and a jury would have been likely to convict in any event, a conviction will be quashed if the Court of Appeal is satisfied that the trial proceedings, taken as a whole, were unfair. In particular, the Court observes that in the cases of *R. v. Roohi*, *R. v. Frixou*, *R. v. Roncoli* and *R. v. Kartal* the conviction of the defendant was quashed as "unsafe" by the Court of Appeal on the grounds of the excessive interventions by the trial judge, notwithstanding the acknowledged strength of the evidence against each of the defendants. Had the applicant been able to demonstrate that the trial judge's interventions in the present case, which were the subject of criticism by the Court of Appeal, had resulted in an unfair trial the Court is satisfied that her conviction would similarly have been quashed, notwithstanding the "overwhelming" case against her.

37. The first significant interruptions by the trial judge came during the cross-examination of S. by the applicant's counsel. The Court notes that the judge can be seen to have intervened on all but four of the twenty-six pages of the transcript of the cross-examination, leading the Court of Appeal to conclude that he had interrupted "far more often than could be justified on any view." However, that court considered it probable that the interruptions resulted from a misunderstanding on the judge's part of the points which the

applicant's counsel was trying to make. The Court, having examined the transcript, concludes that the interruptions were excessive in number and, on occasion, unduly blunt. However, it agrees that a substantial number of the interruptions seem to have resulted from misunderstandings or from the judge's legitimate concern that the jury should not be confused by the line of questioning which was being pursued. Furthermore, the Court notes that at no point did the trial judge stop the applicant's counsel from continuing any line of defence in connection with the schedule of payments produced by S.

38. The next interruptions came in the course of the applicant's own examination-in-chief by her counsel. The Court notes that these were again frequent in number, appearing on twenty-two of the thirty-one pages of the transcript, and that they commenced very early in the course of the examination. The judge effectively took over the examination for a short time (between pages 2 and 4 of the transcript), and his interruptions led the applicant's counsel to seek a short adjournment, which the judge granted (at page 6). The Court thus accepts that the judge's conduct seems to have had the effect of putting the applicant and her counsel at least temporarily out of their stride at an important point of the trial.

The Court notes, however, that following the short adjournment the judge's interruptions became less frequent and the applicant then appears to have been given a proper opportunity to present her version of events to the court without being restricted from pursuing any particular lines of defence.

39. As for the judge's interruption in the course of defence counsel's closing speech, the Court notes that it was very brief. Furthermore, although such interruptions are only rarely warranted, that at issue in the present case appears to the Court, as it did to the Court of Appeal, to have been justified in order to clarify an important aspect of the applicant's defence for the benefit of the jury.

Furthermore, although the judge's summing up was short and contained a small number of factual errors, the Court is of the view that it portrayed the essential features of the applicant's case and that the scope and significance of the errors, to the extent that they were not corrected subsequently, was limited.

40. The Court accordingly agrees with the Court of Appeal that there is substance in the applicant's criticisms of the trial judge's conduct of the proceedings. The question however remains whether this conduct – in particular, the nature and frequency of the judicial interventions – was such as to render the trial, viewed as a whole, unfair.

41. The Court observes in the first place that, although the evidence of S. and of the applicant herself in which the interventions occurred was doubtless the most important oral evidence given in the trial, it made up only a part of the trial proceedings which occupied three days. Further, while certain of these interventions of the trial judge were found by the

Court of Appeal to be without justification, others were found to be justified. While the Court accepts the assessment of the Court of Appeal that the applicant's counsel found himself incommode and disconcerted by these interruptions, it also agrees with the Court of Appeal, from its own examination of the transcript of the evidence, that the applicant's counsel was never prevented from continuing with the line of defence that he was attempting to develop either in cross-examination or through his own witness. In addition, the Court attaches importance to the fact that the applicant's counsel was able to address the jury in a final speech which lasted for 45 minutes without interruption, apart from a brief intervention which was found to be justified, and that the substance of the applicant's defence was reiterated in the trial judge's summing-up, albeit in a very abbreviated form.

42. In these circumstances, the Court does not find that the judicial interventions in the present case, although excessive and undesirable, rendered the trial proceedings as a whole unfair.

43. There has, accordingly, been no breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

44. The applicant complained that the Court of Appeal's decision to uphold her conviction upon a partial review of the evidence violated Article 6 § 2 of the Convention, which states:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

45. The Government, with reference to their submissions under Article 6 § 1, disputed this argument.

46. The Court considers that the applicant's argument amounts to a restatement of her case under Article 6 § 1 of the Convention. For this reason, it concludes that no separate issue arises under this head.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) AND (d) OF THE CONVENTION

47. The applicant complained that the Court of Appeal's determination of her appeal on the basis of partial transcripts of the trial violated her rights under Article 6 § 3 (c) and (d). She also complained that the judge's interruptions during her own examination and the cross-examination of S. violated Article 6 § 3 (d). The relevant parts of Article 6 § 3 provide:

"Everyone charged with a criminal offence has the following minimum rights: ...

c. to defend himself ... through legal assistance of his own choosing ... ; ...

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

48. The Government, with reference to their submissions under Article 6 § 1, disputed this argument.

49. The Court recalls that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair hearing set out in paragraph 1 (see the above-mentioned judgment in *Rowe and Davis v. the United Kingdom*, § 59). Having regard to its finding on the applicant’s complaint under Article 6 § 1, the Court considers that the issues which she raises from the standpoint of paragraph 3 (c) and (d) amount in reality to a complaint that she did not receive a fair hearing. For that reason, it concludes that it is unnecessary to examine them.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicant complained that United Kingdom law provided no effective remedy to a defendant whose trial had been unfair, and that this constituted a violation of Article 13, which provides:

“Everyone whose rights and freedoms as set forth in [the] 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.”

51. She argued that the “safety” test applied by the Court of Appeal under the 1968 Act as amended by the 1995 Act failed to secure the quashing of a conviction following an unfair trial.

52. The Government disputed this argument.

53. Having regard to its decision on Article 6 § 1, the Court considers that it is not necessary to examine the case under Article 13 since its requirements are less strict than, and are here absorbed by those of Article 6 § 1 (see, notably, the *Sporrong and Lönnroth* judgment of 23 September 1982, Series A no. 52, p. 32, § 88).

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously that the applicant’s complaints under Article 6 §§ 2, 3 (c) and (d) and Article 13 of the Convention do not give rise to any separate issues.

Done in English, and notified in writing on 19 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:

- (a) concurring opinion of Sir Nicolas Bratza;
- (b) dissenting opinion of Mr Loucaides.

J.-P. C.
S. D.

CONCURRING OPINION OF JUDGE BRATZA

With some hesitation I have concluded that there was no violation of Article 6 § 1 in the present case. The trial judge's interventions, particularly during the early part of the evidence-in-chief of the applicant were clearly excessive and in several instances without any apparent justification. In the end, however, I am persuaded that, although plainly disconcerting for the applicant and her counsel, the interruptions did not prevent the applicant from putting forward her account of events or her counsel from pursuing and developing his line of defence and that, viewed as a whole, the applicant's trial was not unfair.

In reaching this conclusion, I attach some weight to the fact that the criticisms of the trial judge's conduct of the case were subjected to detailed scrutiny by the Court of Appeal. However, I would have felt more confident in this conclusion if the Court of Appeal had itself expressly ruled on the question whether the judge's interventions were such as to result in unfairness, rather than confining itself to examining whether the applicant's conviction was "unsafe". As pointed out in the majority judgment and in the dissenting opinion of Judge Loucaides, this case gives rise again to the problem identified by the Court in its *Condron* judgment of the apparent divergence between the Convention test of what constitutes a "fair hearing" and the national courts' test of whether a conviction is "safe". It is apparent from the authorities cited in paragraph 36 of the judgment that, in a case such as the present the two tests coincide to the extent that a conviction will not be treated as "safe", if as a result of excessive interventions by a trial judge the trial proceedings are, taken as a whole, unfair. The particular difficulty which arises in the present case is that these authorities and the principles stated in them were not referred to by the Court of Appeal in dismissing the applicant's appeal. While I am able to accept the view of the majority of the Court that, if the Court of Appeal had been satisfied that the trial proceedings were unfair, it would have quashed the applicant's conviction notwithstanding the overwhelming case against her, it would I consider have been preferable that the question whether the trial proceedings were unfair had been expressly addressed and ruled on.

DISSENTING OPINION OF JUDGE LOUCAIDES

The applicant's complaint in this case is that there has been a breach of the principle of fairness as guaranteed by Article 6 § 1 of the Convention inasmuch as the judge sitting in the court of first instance intervened in defence counsel's cross-examination of a key witness and his examination-in-chief of the applicant to such an excessive extent and in such an unjustified manner that it disturbed counsel's concentration, diverted the jury's attention and prevented the applicant from presenting her version of events coherently and in chronological order. According to the applicant this unfairness was not remedied by the appeal proceedings.

The first question that has to be answered is whether there was in fact a breach of the principle of fairness during the first-instance proceedings.

There is no definition of the term "fairness" for the purposes of the Convention. It is not a term of art and does not have to be given any strict or technical meaning. On the contrary, as pointed out by the Court, the "right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting [the guarantees of] Article 6 § 1 of the Convention restrictively" (*Moreira de Azevedo v. Portugal* judgment of 23 October 1990, Series A no. 189, § 66).

It should also be pointed out that from the Convention standpoint a hearing may be held "unfair" and a breach of Article 6 even in the absence of proof of actual prejudice. It is not so much the effect on the outcome of the proceedings that is in question but the process of "hearing" (see *Artico v. Italy* judgment, Series A no. 37, § 35). In this respect, I believe that the appearance of a fair administration of justice on the basis of an objective test should also be relevant to the question of fairness. It is true that the proceedings should be looked at as a whole but at the same time it is correct to say that a single incident or a particular attitude of the Court, even for a limited duration, may render the hearing unfair.

For the purposes of the present case it is important to bear in mind the role of a judge in the common-law system in force in the respondent State. For if a judge goes beyond his legitimate role in the conduct of the proceedings, that is an element that points to unfairness. In contrast with the civil-law system (the inquisitorial system) the judge in the common-law system is not himself carrying out an investigation into the facts of the case and cannot question the witnesses other than to seek clarification on specific matters which appear to him unclear. The questioning of witnesses and any objections to any questions fall within the competence of counsel of the parties (the accusatorial system) (see *Halsbury's Laws of England* 4th Edition vol. 17 paragraph 281 no. 1; "If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. Lord Bacon spoke right when he said that: 'Patience and gravity of hearing is an essential part of justice; and an over-speaking

judge is no well tuned cymbal”: per Denning L.J. in *Jones v. National Coal Board* [1957] 2 All ER 155, CA.)

It is evident in this case that the trial judge went beyond his role and to a great extent took over the task of questioning key witnesses himself and on occasions even disallowed questions to which the counsel concerned had raised no objection (see the transcript of the cross-examination by applicant’s counsel of Mr David Shepherd, 16 April 1997 and of the examination-in-chief of the applicant, 17 April 1997). The Court of Appeal seems to have accepted that the judge exceeded his role by stating in this respect the following:

“the learned judge did interrupt cross-examination [of S.] far **more often than could be justified on any view...**

it does seem to us that on occasions this very experienced and highly regarded circuit judge (now retired) did enter the arena sometimes for legitimate reasons **and at other times perhaps without justification**” (emphasis added).

However, the applicant’s complaint regarding the interventions in question is not confined to their extent but covers also their nature and effect. She complained in particular that the judge intervened and interrupted the testimony of the witnesses in question in such a way and with such frequency that her counsel’s concentration was disturbed and the attention of the jury and also of the applicant were diverted, the applicant thereby being prevented from presenting a coherent and chronological account of her version of events.

Bearing in mind the interventions in question recorded in the transcript of the evidence presented to this Court, one can readily understand that the applicant and her counsel were disconcerted and thrown off balance and that that had a negative effect on the proper presentation of the case for the defence. In fact, the Court of Appeal itself has accepted the substance of this complaint as is evident from the following passages of its judgment:

“It appears from a reading of the transcripts that there were frequent interruptions at the start of the appellant’s evidence. In our view those interruptions, though no doubt well intentioned, may well have had the untoward and unfortunate effect of putting the appellant out of her stride and also, as seems to have been the case and as Mr Engel tells us, of disconcerting him. Likewise, so far as the evidence of [S.] is concerned, it does appear that, probably through a misunderstanding of the points that Mr Engel was seeking to make, the learned judge did interrupt cross-examination for more often than could be justified on any view.”

In this context it is important to bear in mind the inequality between counsel in judicial proceedings and the judge presiding over them. If the judge is wrong on any point, if he oversteps his role in any way, or even is discourteous to the lawyer or a witness or obstructs the proper presentation of the evidence or the submissions of the parties, there is nothing that counsel can do during the hearing of the case to remedy the situation. However courageous and able a counsel may be, he cannot afford to point

out effectively during the course of the proceedings any errors or irregularities committed by a judge without thereby running the risk of clashing with the judge or of causing ill-feeling that could adversely affect his case. In short, counsel cannot afford to do anything that may arouse the judge's hostility or antagonise him or which the judge may interpret as so doing. Therefore, the judge should always be conscious of the delicate position of the lawyers appearing before him and exercise the restraint necessary to avoid placing them in an incommodious position that can only have the result of a feeling of oppression on their part to the detriment of the proper presentation of their case. I am inclined to find that the judge failed to exercise such restraint in this case.

Having gone through the transcript I am convinced that the interruptions by the judge did have the effect of preventing counsel for the applicant and the applicant herself from having an adequate and effective opportunity to present their case. That, in my opinion, was unfair and contrary to the relevant provisions of Article 6 § 1 of the Convention. It may be useful to refer here, by way of example, to an unjustified interruption by the judge when he questioned the applicant during the first few minutes of her examination-in-chief. The judge put twenty-two questions to the applicant and they were followed by an exchange between the judge and applicant's counsel which ended as follows:

“JUDGE HARRISON-HALL: Well, you carry on, you carry on, you carry on then. Don't let me try to shorten the case.

Mr ENGEL: Sorry?

JUDGE HARRISON-HALL: I said don't let me try to shorten the case.

Mr ENGEL: Well, it's not a matter of shortening the case, your Honour. It's a matter of her being able to put her evidence before the court in the way I think is proper on her behalf and that's what I am trying to do, in the shortest way possible that I can.

Your Honour, could I ask for a short adjournment?

JUDGE HARRISON-HALL: Yes, certainly.

Mr ENGEL: Thank you very much”.

Another example of an intervention on the part of the judge in question which supports the view I have expressed above is the lengthy series of exchanges between the judge and counsel for the applicant initiated by the former during the cross-examination of Mr Sheppard and which included the following:

“Mr ENGEL: What I'm suggesting, your Honour, is that this money was not stolen by the defendant. What she has said in interview is that it could have been stolen at work or in the pub.

JUDGE HARRISON-HALL: Yes.

Mr ENGEL: So it's right, in my submission, that these questions are put, which is the reason that I am putting them.

JUDGE HARRISON-HALL: But if it was stolen in the pub, the money, then surely the pay-in slip, what are you suggesting, that there is a pay in slip showing this money would have been paid in on a specific date and she'd written it all out and when the money went the pay-in slip had gone as well?

Mr ENGEL: If it went at work rather than in the pub.

JUDGE HARRISON-HALL: Well only she knows when it went.

Mr ENGEL: No, no, she doesn't know your Honour, that's not fair.

JUDGE HARRISON-HALL: Well I understood your case was that it had gone from her handbag.

Mr ENGEL: Sorry, she's saying, with respect, that it either went at work or in the pub, she's not saying she knows where ...

JUDGE HARRISON-HALL: Oh ... (inaudible) ... right."

The applicant alleges that the interruptions demonstrated an element of hostility towards the defence. On the basis of the transcript produced to our Court I am not prepared to accept that there was any deliberate hostility on the part of the judge against any of the parties. Nevertheless, the extent and nature of the judge's interventions, considered as a whole, might reasonably create the impression to an objective observer that the judge unduly hampered the task of the defence and, in that sense, he was hostile. Consequently, in my opinion there has also been in this case a failure to ensure the required appearance of a "fair hearing". The Government in their observations of July 2000 state the following: "Not all the trial judge's interruptions were hostile to the defence ... Even those that were, were aimed at clarifying matters for the jury".

In arriving at the above conclusions I have been conscious too of the whole context of the case, including certain other irregularities in the conduct of the case by the trial judge; although these were not invoked by the applicant before us, they appear to have been accepted by the Court of Appeal in its judgment that was communicated to the Government as part of our examination of the case with the following question: "Did the applicant receive a fair hearing before the trial judge in accordance with Article 6 § 1 of the Convention?"

These irregularities are evidenced by the following passages of the aforementioned judgment:

"... That was a very short way of putting the defence forward. It does not deal in great detail with the points which Mr Engel had been attempting to advance both in

the course of the cross-examination and in his speech. To that extent the criticism is justified.

... Further it is said that the judge wrongly directed the jury that there was no evidence of there being a second paying-in-book in use at the time, and the complaint is made that the appellant said that there was (in conflict, it has to be said, with the evidence of [S.]). This was a mistake on the judge's part, so it appears, and something which we have to take into account.

It is then said that the judge erroneously implied that defence counsel had failed to suggest to [S.] that there was more than one paying-in book, and once again it appears that the judge was in error about that.

... As we have observed, there are criticisms which can be made of the manner in which this trial was conducted”.

For the above reasons I have come to the conclusion that there has been a breach of the principle of fair hearing during the trial of this case. There remains the question whether the unfairness at the trial was remedied by the Court of Appeal. The applicant in his appeal has included the complaint that the trial was unfair for exactly the same reasons that were stated to us. The Court of Appeal at page 4 of its judgment stated:

“The principal ground relied upon by Mr Engel, who appeared at trial and also on this appeal before us, was that the trial was unfair (and he does not mince his words) because of the attitude of the learned judge from the moment that he began to cross-examine Mr Shepherd ...”

Thereafter, the Court of Appeal after setting out in detail the complaint regarding unfairness during the trial, stated: “We find that there is some substance in those criticisms”.

There follow in the judgment the findings of the Court of Appeal in respect of the “criticisms” in question which I have already quoted above and which can be summarised as follows:

“There were frequent interruptions at the start of the appellant's evidence”.

“The interruptions, though no doubt well intentioned, may well have had the untoward and unfortunate effect of putting the appellant out of her stride and also, disconcerting[the counsel of the applicant].”

“Likewise, so far as the evidence of Mr Shepherd is concerned,... the judge did interrupt cross-examination far more often than could be justified on any view.”

Later on in its judgment the Court of Appeal repeats: “there are criticisms which can be made of the manner in which this trial was conducted” and “counsel found himself incommode and disconcerted by those interventions and interruptions [of the trial judge]”. The Court then expresses the view that “perhaps Mr Engel was on this occasion a trifle oversensitive” but the Court admits that “that does not, of course, detract

from the validity of the criticisms which has made of the manner in which this trial was conducted”.

Yet, in spite of the vindication in substance by the Court of Appeal of the appellant’s complaints regarding the unfair conduct of the trial, as explained above, and in spite of the English case-law, brought to our notice, to the effect that on appeal the appellate court is entitled to examine whether there was in fact an unfair trial, that being something which may result in the judgment of the lower court being quash, the appeal court in this case did not in the end apply the test of unfairness but only the test of whether the conviction was “unsafe”. In fact, it appears that the Court of Appeal felt that that was the only test applicable in an appeal case like the present one. This is evident from the following passage at the end of the judgment:

“We look at those criticisms – some well-founded, some not – in the round. In the end we have to ask ourselves whether or not we think this conviction was unsafe. That is the test we have to apply.

The case was a very strong one; indeed the evidence was overwhelming ... we have not a moment’s hesitation in saying that, so far as we are concerned, the conviction was entirely safe. Notwithstanding the criticisms which we have found to be made out as to the manner in which the trial was conducted, this appeal will be dismissed.”

However, the test of safety of a conviction does not satisfy the test of fairness of a hearing as required by Article 6 of the Convention. I reiterate here what our Court said in the case of *Condrón v. the United Kingdom* judgment of 2 May 2000, ECHR 2000-V:

“The Court must also have regard to the fact that the Court of Appeal was concerned with the safety of the applicants’ conviction, not whether they had in the circumstances received a fair trial. In the Court’s opinion, the question whether or not the rights of the defence guaranteed to an accused under Article 6 of the Convention were secured in any given case cannot be assimilated to a finding that his conviction was safe in the absence of any enquiry into the issue of fairness”.

Therefore, the unfairness of the trial was not, in my opinion, remedied in the appeal proceedings.

For all the above reasons, I find that there has been in this case a breach of the principle of fairness as guaranteed by Article 6 § 1 of the Convention.