



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

FOURTH SECTION

**CASE OF HENWORTH v. THE UNITED KINGDOM**

*(Application no. 515/02)*

JUDGMENT

STRASBOURG

2 November 2004

**FINAL**

***02/02/2005***

*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 Henworth v. the United Kingdom,**

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

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Ms L. MIJOVIĆ,

Mr D. SPIELMANN, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 16 September 2003 and 12 October 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 515/02) 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”) by a United Kingdom national, Frank Henworth (“the applicant”), on 15 December 2001.

2. The applicant was not represented. The United Kingdom Government (“the Government”) were represented by their Agent, Ms E. Willmott of the Foreign and Commonwealth Office, London.

3. The applicant alleged that the criminal proceedings, concerning his trial for murder, exceeded a reasonable length of time.

4. The application was allocated to the Fourth 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.

5. By a decision of 14 January 2003, the Court declared part of the application inadmissible and invited the respondent Government to submit observations on the remaining complaints. On 6 September 2003, the Court declared the remainder of the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is currently serving a sentence of life imprisonment in HM Prison Long Lartin.

8. On 15 June 1995, Patrick 'Nobby' Clarke was murdered in the flat he had shared with the applicant for the preceding eighteen months. He had been clubbed over the head with what was probably a hammerhead in a sock and possibly another weapon. The applicant was arrested and charged with murder on 16 June 1995.

9. On 10 July 1996, the applicant was tried for the murder of Mr Clarke, the issue for the jury being whether it was the applicant who was responsible for the murder. He was convicted on 26 July 1996 and on 26 September 1996 appealed against the conviction. On 26 February 1998, the conviction was quashed by the Court of Appeal on the basis that the judge had misdirected the jury. A retrial was ordered which took place between 20 July and 5 August 1998, when the jury was unable to reach a verdict and was discharged.

10. The Crown elected to proceed with a second retrial which began on 22 July 1999. At the outset counsel had unsuccessfully submitted that it was oppressive and an abuse of process to try the applicant again, after two unsuccessful trials. During the trial the applicant dispensed with the services of his counsel and solicitor and proceeded to defend himself, with assistance from a new solicitor. There came a point where he no longer felt able to do so and requested an adjournment. On 2 August 1999, the jury was duly discharged, and a further retrial began on 13 September 1999. The applicant did not give evidence at that trial. On 21 September 1999, he was convicted, by a majority of 10 to 2, and was sentenced to life imprisonment.

11. At each of the trials the Crown's case was essentially the same, except that a witness called Crittenden, to whom the applicant allegedly made a confession whilst they shared a prison cell, was not relied upon after the first trial, the Crown being of the view that they were not able to present him as a witness of truth. In addition, from the 84 prosecution witnesses called to give evidence at the first trial, only 33 were later called.

12. On 29 October 1999, the applicant appealed against the conviction. He argued *inter alia* that the second retrial (in July 1999) was an abuse of process, in that it flouted the convention in English law that if the prosecution has failed to secure a conviction on two occasions it does not then seek a further trial. Although the circumstances were different from those usually relied upon (namely the failure of the jury to reach a verdict on two occasions), it was argued on the applicant's behalf that the first conviction was found not to be safe and so could not be relied upon and on

the second occasion the jury could not agree. The discharge of the jury in July 1998 should have been the end of the matter.

13. On 19 January 2001, the Court of Appeal found that there was no reason to conclude that the practice was applicable in the particular circumstances of the applicant's case. The court noted that there was a practice but not a rule of law for the prosecution not to offer evidence where two juries have disagreed and found no general principle existed barring further retrial where the prosecution had failed twice to secure a conviction. It said:

“25. ...Where a serious crime has been committed and it is shown that there is a case to answer as far as a defendant is concerned, there is a clear public interest in having a jury decide positively one way or another, whether that case is established.

26. Having said that, we recognise the possibility that in any given case a time may come when it would be an abuse of process for the prosecution to try again. Whether that situation arises must depend on the facts of the case which include, first, the overall period of delay and the reasons for the delay; second, the results of previous trials; thirdly, the seriousness of the offence or offences under consideration; and fourthly, possibly, the extent to which the case now to be met has changed from that which was considered in previous trials.

27. Here the prosecution case did change in that reliance ceased to be placed on the evidence of a man called Crittenden, a prisoner who had given evidence in the first trial as to what had allegedly been said by the [applicant]. But the changes in the prosecution case cannot, in our judgment, have rendered it impossible for the [applicant] to have a fair trial. The reality was he no longer had to face evidence which was adduced in the previous trial as to what he himself had said when attempting to deal with the evidence of Crittenden. ...

29. ... For the reasons we have given we are satisfied that the abuse of process argument was rightly rejected here.”

14. The Court of Appeal refused leave to appeal to the House of Lords, but certified two questions of law of general public importance, namely,

“1. Whether a defendant having been tried twice without a safe verdict being returned it is oppressive to try him a third time and hence an abuse of the court's process.

2. Whether it is oppressive for the Crown to depart from its established practice of not trying a defendant for a third time, absent compelling fresh evidence or conduct by the defendant causing the retrials.”

15. On 17 June 2001, the House of Lords refused the petition for leave.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

16. The applicant complains of the length of his trial for murder. Article 6 § 1 provides in so far as relevant:

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

#### A. Period to be taken into consideration

17. The applicant was arrested on 16 June 1995. The appeal in respect of his conviction after his second retrial culminated with the rejection of his petition for leave to appeal to the House of Lords on 17 June 2001. The criminal proceedings lasted some six years.

#### B. The parties' submissions

18. The applicant submitted that his trial took too long and disagreed that the context of the jury trial was a relevant factor, States being obliged to organise their judicial systems so as to ensure compliance with Article 6 of the Convention. He argued that the case was not complex and pointed to the fact that the first trial was concluded within thirteen months of the murder as evidence of the straightforward nature of the case.

19. As to delays attributable to him, the applicant disputed some of the factual detail supplied by the Government. The applicant accepted that he had delayed by a month after the first trial before lodging his appeal, but not three months. He did not accept that the unavailability of counsel between January and July 1999 was a matter for which responsibility could be attributed to him. He submitted that it was incorrect to say that he had delayed in lodging his appeal after the final trial in September 1999 and that he was not responsible for the ten months' delay as alleged by the Government. He claimed that only about two months of the delay was attributable to him (although the periods for which he accepts responsibility appear to total three and a half months) and that the overall period during which he had to endure uncertainty as to his fate was too long.

20. The applicant did not make any submissions in response to the Government's observations on the issue of prejudice as a result of the delay but reiterated a number of complaints about his legal representatives and an alleged miscarriage of justice.

21. The Government submitted that the period of six years was reasonable in the circumstances. The proceedings were necessarily complex,

involving as they did a brutal murder and some 84 witnesses at the first trial, and there were six separate judicial determinations to take into account. They also asserted that it was relevant to take into account that a jury is more likely to disagree than a panel of professional judges. The Government argued that the applicant was responsible for two months' delay in lodging his application for leave to appeal after the first trial and that problems with the availability of his counsel accounted for six months' delay between January and July 1999. Furthermore, the trial in August 1999 was halted at the applicant's request and after the trial in September 1999 the applicant delayed until 19 October 1999 before lodging his appeal. About a month's delay was further attributable to the applicant because the petition to the House of Lords was sent to the wrong address. In total they claimed that about two years' delay was attributable to the applicant.

22. The Government submitted that there had been no long periods of inactivity in the proceedings for which there was no explanation and that all the periods between the various stages that were not attributable to the applicant were reasonable. They also argued that in the context of the overall length of proceedings it was relevant to consider the clear public interest in the jury deciding one way or another whether the case was established when a serious crime had been committed. They also observed that the applicant did not give evidence at the final trial and could not therefore claim that the passage of time had impaired his memory. He did in any event have the account he had given at the time in the recorded police interviews and there was no inequality of arms. The evidence the applicant had to face was essentially identical at each trial save that after the first trial evidence had been omitted, so that there was less for him to deal with. Moreover, the judge had given a clear direction to the jury about delay, which was commended by the Court of Appeal.

### **C. The Court's assessment**

23. The Court would observe that the application was only declared admissible as regarded the applicant's complaints about the length of his trial, the remainder of his application being rejected as inadmissible. Its examination is therefore restricted to the issue of length.

24. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

25. The importance of what was at stake for the applicant, a serious criminal conviction and a sentence of life imprisonment, is not in doubt.

26. As regards the complexity of the proceedings, whilst the Government have pointed to the number of witnesses, the seriousness of the charge and the brutality of the killing as indicative of complexity, it is not apparent that the case presented any special difficulty. Whilst, as the applicant acknowledged, the gravity of the charge was a relevant factor, for a murder case the proceedings were relatively straightforward.

27. The Government have also relied on the procedural context, in so far as they submitted that a jury was more likely to disagree than a professional panel of judges. They have not substantiated this assertion however, nor could it absolve the State's responsibility to organise its judicial system in such a way as to ensure compliance with the Convention, as the applicant has observed (e.g. *König v Germany*, judgment of 28 June 1978, Series A no. 27).

28. The Court considers that the period from the applicant's first conviction in July 1996 to the appeal judgment in February 1998, some nineteen months, was unduly long in the absence of any particular explanation. The Government have provided no real explanation for the delay, save that the applicant was late in lodging his appeal, accounting for two months of delay. This however leaves a period of seventeen months unaccounted for.

29. There can be no complaint about the period of five months between the quashing of the conviction in February 1998 and the applicant's first retrial in July 1998, but there was then a delay of twelve months before the second retrial, which presents more of a problem. The Government have observed that six months of the delay, between January and July 1999, was accounted for by the unavailability of the applicant's counsel. While the applicant has maintained that this was not a matter over which he had any control, it is still a factor attributable to him rather than to the respondent State. The remaining period of six months, which is attributable to the State, does not in itself appear unduly long. Further, the short delay between the abortive second retrial and the final trial was attributable to the applicant, as he has acknowledged. Nor is the next period, the sixteen months from the applicant's conviction in September 1999 to the judgment of the Court of Appeal in January 2001 patently excessive. However, the Court considers that the State was by this time under a responsibility to proceed with particular diligence. Not only was the applicant in custody, but the Crown had elected to retry him for a second time and in these circumstances it was incumbent on the authorities to ensure that any delay was kept to an absolute minimum (see *mutatis mutandis*, *O'Reilly v Ireland*, no. 21624/93, Commission's report of 22 February 1995, § 64). It is true that there was a clear public interest in a jury deciding one way or another whether the charge was established, in the interests of the proper administration of justice, especially when such a serious crime had been committed.

However, this does not detract from the need to ensure that the proceedings were conducted with particular diligence.

30. The parties are now agreed that the applicant lodged his appeal on 29 October 1999, just over a month after he was convicted and sentenced. It was not however until 19 January 2001 that the Court of Appeal terminated its examination of his appeal, a further lapse of time of 14 months and 20 days. The final period of proceedings in the House of Lords does not disclose undue delay, bearing in mind the delay of about a month attributable to the applicant.

31. Overall, the Court concludes that, whilst there are no unusually long and unexplained periods of inactivity, there are a number of delays which, taken together and in light of the decision to retry the applicant again after July 1998, disclose that the proceedings did not proceed with the necessary expedition and failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

33. The applicant expressed his intention to make claims for just satisfaction but has failed to specify these claims within the time-limit set down for the purpose. Nor have any claims been lodged by his legal representatives for the period during which he was represented. Accordingly the Court makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

*Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 2 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Matti PELLONPÄÄ  
President