CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 63716/00
by Anthony SAWONIUK
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 29 May 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced on 5 December 2000 and registered on 11 December 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Polish national, born in 1921 and currently serving a sentence of life imprisonment in HM Prison Gartree. He is represented before the Court by Mr M. Lee, a solicitor practising in London.

A. The circumstances of the case

The applicant was born in 1921 in Domachevo in Belarus.

Until 1939, Domachevo was in Poland. The Germans briefly occupied the region before ceding it to Russia. In June 1941, the Germans invaded again and occupied Domachevo until July 1944. Domachevo had an estimated population in 1939 to 1941 of between 3,000 and 5,000 of which a significant majority were Jewish.

The applicant joined the local police force established by the Germans soon after the beginning of the occupation, ultimately becoming local commander of the force. During the period of the occupation, the Nazi policy of genocide against the Jewish members of the population was implemented. According to German records, on 19 to 20 September 1942, 2,900 Jewish people were massacred in Domachevo. This was a combined operation carried out by Germans and local police. Searching for and killing Jews who escaped such operations were part of the tasks of the local police.

The applicant left the region in or about July 1944 when the Germans began to retreat and joined the Polish army in or about December 1944. He arrived in the United Kingdom in about 1946 and has lived there ever since.

The War Crimes Act 1991 provided that proceedings for murder could be brought against a person irrespective of the nationality of the person in respect of offences committed during the Second World War (see Relevant Domestic Law and Practice below).

On 1 and 3 April 1996, the applicant was interviewed by the British police concerning his activities in Domachevo during the German occupation. In his statements, he denied that he had been a member of the local police; that there had ever been a locally recruited police force there; that there had only been unarmed lookout men, not in uniform, keeping watch for Russian partisans; that there had been no ghetto in Dormachevo and no restriction of movement had been imposed on the Jewish population. He also denied that he had been married in Domachevo. He said that he had been in Germany on forced labour at the time under investigation.

The applicant was charged on an indictment with four counts of murder:

Count 1: that between 19 and 27 September 1942 he had murdered a Jewess in Domachevo in circumstances constituting a violation of the laws and customs of war;

Count 2: that between 19 September and 4 October 1942 he had murdered a Jew named Schlemko in Domachevo in circumstances constituting a violation of the laws and customs of war;

Count 3: that between 19 and 4 October 1942 he had murdered a Jewess (other than that specified in Count 1) in Domachevo in circumstances constituting a violation of the laws and customs of war;

Count 4: that between 19 and 31 December 1942 he had murdered a Jew known as Mir Barlas in Domachevo in circumstances constituting a violation of the laws and customs of war.

In the trial which took place between 8 February and 1 April 1999, before Mr Justice Potts and a jury, the applicant was represented by senior and junior counsel and solicitors.

In essence, the prosecution case was that the applicant had been a willing volunteer in the local police force and engaged in the search and kill operation carried out after the massacre of the Jewish inhabitants of the ghetto in Domachevo on 19-20 September 1942. Witnesses for the prosecution alleged that they had seen the applicant engaged in acts of violence against Jewish persons and that he had been involved in executions. The defence case was that, although the applicant now admitted being a policeman and of being in charge at some point, he had been absent from the village when the principal massacre occurred and had taken no part in any search or kill activities afterwards. He alleged that he had on the contrary been a friend of the Jews in the village and that the witnesses who made allegations about his alleged participation in war crimes were liars in league with the KGB and Scotland Yard, or motivated to obtain indiscriminate vengeance because of relatives lost or killed during the war.

Before the commencement of the proceedings, the defence made a number of applications: that the trial should be stayed as an abuse on the basis that due *inter alia* to the lapse of time since events the applicant could not obtain a fair trial. The application was refused by the trial judge who considered that it was entirely speculative as to whether the unavailability of witnesses was a detriment or a bonus, that the evidence of the eye-witnesses called by the prosecution could be properly and rigorously tested within the confines of the trial process, and that any points which the defence might have about the reliability of the evidence could be fairly accommodated within the trial process. The defence also made an application that the evidence of two witnesses, Ivan Baglay and Evgeny Melianuk, be excluded as inadmissible. On 8 February 1999, the judge ruled that the evidence of both witnesses was relevant and admissible and, on 26 February 1999, that it should go before the jury.

At the close of the prosecution case, the judge ruled that there was insufficient evidence as a matter of law to support a conviction on counts 2 and 4 and that the applicant should be acquitted. He ruled that the evidence going to those two counts should be withdrawn from the jury but that

evidence concerning other matters given by two witnesses (Ben Zion Blustein and Ivan Stepaniuk) who had testified on those counts should remain with the jury.

During the trial the judge and jury visited the location at Domachevo, including the site in a forest where one witness, Fedor Zan, claimed to have seen the applicant execute a number of Jewish women, including the victim specified in Count 3.

During the evidence of a police officer, counsel for the applicant posed questions concerning the applicant's claim that he had served in the Polish Free Army and reference was made to Polish military records which were never formally proved but which by agreement were before the jury. The police officer also made reference to a missing persons document, obtained from German records, which referred to the applicant as going missing from a Waffen SS unit in late November 1944. This document had not been put in evidence. The judge directed the jury that hearsay was not evidence, that the document to which the officer had referred had not been prepared by him and that, accordingly, the document was not evidence.

When the applicant gave evidence, he referred to his service in the Polish army, again with reference to the Polish records, and stated that he had in fact left Domachevo at the end of 1943, not during 1944 as had been part of a formal admission by his legal representatives. During cross-examination, he appeared to claim that he had joined the Polish brigade in early 1944. Prosecution counsel asked him whether he had ever served in the German army and he denied it very emphatically. The judge ruled that it was permissible to put to him questions concerning the Polish military records and permitted prosecution counsel to ask the applicant to look at the missing persons document and put questions on that document. The applicant denied that he had ever joined the Waffen SS, but confirmed that it contained an accurate record of his personal details. He suggested that it had been fabricated by the police officers in the case. During this questioning, the applicant became highly emotional and lost his composure.

The prosecution made an application to the judge to call evidence to prove the provenance of the missing persons document in order to rebut the allegation of fabrication. On 24 March 1999, the judge refused the application. He stated that the prosecution accepted that the document was not evidence that the applicant was a member of the Waffen SS and that the state of the evidence on that point was that emanating from the applicant, namely, his denial. He considered that at this late stage of the trial any evidence as to the origin of the document might in those circumstances have a disproportionate effect on the consideration of jury of the evidence as a whole.

On 25 March 1999, before the closing speeches were due to begin and a long adjournment over a weekend, the judge after consulting counsel decided to withdraw the applicant's bail. He stated that this was due to two

concerns: his concern for the ordinary continuance of the trial, as that concept was defined in the Bail Act as failing to surrender to custody, and the welfare of the applicant. He took note of the applicant's advanced age, his problems of health, the fact that he lived alone at an address known to the press and that, if bail was withdrawn, he would be held in the hospital wing of Belmarsh prison with medical attention and a carer to oversee his welfare. He stated:

> "I have come to the conclusion that, against the whole background of the case, and bearing in mind particularly the manner in which the defendant gave his evidence over the last two or three days, that the defendant comes within the terms of paragraph (3) ... that bail should be withdrawn for his own protection and that the arrangements to which I have referred would ensure that he is properly looked after until the conclusion of this trial.
>
> I emphasise that in taking this course my concern is for the defendant's own protection."

An application was made to the High Court to review bail on 26 March 1999. It was refused. The applicant states that the High Court judge took the view that he should not interfere with the decision given the stage reached in the proceedings, i.e. the closing speeches.

On 29 March 1999, defence counsel made representations, *inter alia*, that the arrangements made for the applicant in prison had not reflected those referred to by the trial judge. He had allegedly been held in a psychiatric ward with disturbed prisoners instead of a room of his own, had been subjected to strip searches and had passed a very distressing weekend. On hearing re-assurances from defence counsel that arrangements would be made for transporting the applicant to and from the court room and for ensuring his welfare in his own home, and having regard to the shortness of the overnight adjournment of the trial, the trial judge reinstated bail.

On 1 April 1999, the jury convicted the applicant of counts 1 and 3. The applicant was sentenced to a mandatory term of life imprisonment. The trial judge recommended that the applicant "never see the light of day". The Lord Chief Justice recommended a tariff (the period to be served for retribution and deterrence) of five years. The Home Secretary has yet to fix the tariff.

The applicant appealed against conviction to the Court of Appeal. He lodged grounds which, *inter alia*, alleged that the judge had erred in failing to stay the proceedings and in admitting the evidence of Ivan Baglay and Evgeny Melianuk, that the judge failed to direct the jury on how to approach evidence which related to similar facts or other crimes not the subject of the indictment, that the judge had erred in not discharging the jury on the basis that they had heard evidence relating to counts 2 and 4 which had been withdrawn and that the verdict of the jury was unsafe by reason of the cross-examination of the applicant on a Waffen SS document which was not

evidence in the case and during which his loss of composure would have reflected on his credit.

In its judgment of 10 February 2000, the Court of Appeal rejected the applicant's appeal. It summarised the evidence on counts one and three as follows:

> "The core of the prosecution case on count one was contained in the evidence of Alexander Baglay. On the day of the massacre, he was at home in Borisy a very small village on the outskirts of Domachevo. He heard firing from the direction of the massacre site. Two or three days later, with another boy about three years older (and thus about sixteen) he went to the deserted ghetto searching for clothes and shoes. While there the boys were caught by the police and taken to the police station. From the police station the [applicant] took both boys to a site at the eastern site of the ghetto... There Alexander Baglay saw two policemen whose names he could not remember guarding two Jewish men and a Jewish woman. They were standing by a recently dug hole. The [applicant] told the three victims to undress, which they did, reluctantly on the part of the woman. ... When they were undressed the victims were lined up and shot by the [applicant] with a pistol... He pushed them into the pit with his knee as they fell. The boys then buried the bodies in the pit with the spades which were on the site. They were offered the victims' clothes but declined... Alexander Baglay said that his companion, Valodia Melianuk, had died but gave a date for his death which was shown to be inaccurate. He had not mentioned this incident to the NKVD when questioned immediately after the war. His first account of the shooting was given to the British police in 1996.
>
> The core of the prosecution case on count three was contained in the evidence of Fedor Zan. He lived in Borisy and worked in Brest travelling to and fro by train via ... Domachevo. About two or three weeks after the massacre in September 1942 he was returning in the evening from Brest. On this occasion he got off the train at Kobelka where his sister lived because he had something to deliver. He went to her house... and was then returning through the woods to his home. He said that as he was walking through the woods he heard crying and shouting. He walked in the direction of the noise to see what was happening. He saw a number of Jewish women who were getting undressed. They were told to place their clothes in a pile and then turn to face a pit. These directions, he said, were given by the [applicant]. He hid himself in the bushes and observed what happened. The [applicant] had a submachine gun. The women turned to face the pit and the [applicant] mowed them down with the machine gun. They fell into the pit. There were, according to him, no policemen present other than the applicant and no Germans. He estimated that there were no fewer than 15 Jewish women, and no men, but he recognised none of them. He was a considerable distance away (during the trial the distance was calculated to be 127 or 128 paces) and watched for 4-5 minutes. Dusk was beginning to gather, but Mr Zan's evidence was that the sun was still in the sky. He said that he recognised the [applicant] 'by his size and by his face. He was famous by that time.' Mr Zan first described this incident to British police in February 1996."

As regards the judge's failure to stay the proceedings for abuse, the Court of Appeal found that he had correctly applied his discretion on the basis that the reliability of the evidence could be properly and fairly tested in the trial and subject to his powers of direction as trial judge and that it had not been established that the continuance of the proceedings would deny the applicant a fair trial.

As regards the allegations that the judge should have excluded evidence of witnesses about alleged assaults and the taking away of Jewish families by the applicant which were not on the indictment, it held that this evidence was relevant to prove that the applicant was a policeman involved in the search and kill operation and as establishing the context and circumstances in which the offences were said to have been committed. The evidence had not been relevant as "similar fact" evidence and the judge had not been required to warn the jury that these matters could not be relied on to prove a propensity to kill Jewish victims. The judge had properly explained to the jury the basis on which to consider the evidence and they had not been led to infer that the mere fact that the applicant was implicated in other acts of violence against the Jewish population meant he was more likely to have committed the two specific offences of murder.

The Court of Appeal found no basis to fault the judge's approach to the evidence concerning Mr Zan's identification of the applicant. Nor had he erred in allowing evidence concerning the applicant's role as a policeman during the period and during the search and kill operation to remain before the jury even after the two counts on which those witnesses had principally given evidence had been withdrawn. As regards the cross-examination on the basis of the missing records document, it considered that the judge had given a clear direction to the jury that this document could not constitute evidence that he was a member of the Waffen SS and that it could not contradict his assertion that he was never a member of that organisation. They were not persuaded that the questioning had overstepped the proper limits, pointing out that this line of cross-examination had been inevitable once the applicant had relied on the Polish army records to give a favourable impression through his service with the Allies.

The judgment concluded:

> "Given the unique circumstances of this case and the grave consequences of conviction to the appellant, we have considered with care whether there is any more general ground upon which these convictions could be regarded as unsafe. For reasons already given, we conclude that the jury was in a very advantageous position having seen the site and heard the evidence, to form a reliable judgment on count three. On count one we remind ourselves that the conviction rested very largely on the evidence of a witness who was, if his evidence was reliable, standing within feet of the [applicant] when this murder was committed. It was not a case of an identification made 56 years after the event but one of contemporaneous recognition to which the witness deposed after that lapse of time. It is not easy to imagine any event, which if witnessed would impress itself more indelibly on the mind of a 13 year old boy. The jury had to consider whether the witness was honest and reliable. They concluded that he was both. We see no reason to question the soundness of that judgment."

The Court of Appeal refused leave of appeal to the House of Lords but certified two points of law of general importance, namely:

1. Whether evidence of other criminal activity, not charged in the indictment, allegedly committed by the defendant is admissible to prove that

the defendant is one of a group of people, one of whom must have committed the offence charged or under a broader basis, by which the jury ought to have had evidence of the whole background to the offence in order to enable them to see the offences charged in context.

2. If such evidence was admissible, must the jury be instructed in terms that they must not treat the evidence as proof of propensity.

On 15 June 2000, the House of Lords refused the petition for leave to appeal. No reasons were given.

B. Relevant domestic law and practice

The War Crimes Act 1991

Section 1 of the War Crimes Act 1991 provides:

> "(1) ... proceedings for murder, manslaughter or culpable homicide may be brought against a person in the United Kingdom irrespective of his nationality at the time of the alleged offence if that offence –
>
> (a) was committed during the period beginning 1st September 1939 and ending with 5th June 1945 in a place which at the time was part of Germany or under German occupation; and
>
> (b) constituted a violation of the laws and customs of war.
>
> (2) No such proceedings shall ... be brought against any person unless he was on 8th March 1990, or has subsequently become, a British citizen or resident in the United Kingdom, the Isle of Man or any of the Channel Islands."

Bail

According to the Bail Act 1976, Schedule 1, defendants accused of imprisonable offences are subject to the following provisions concerning detention prior to conviction:

"*Exceptions to right to bail*

> 2. The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would –
>
> (a) fail to surrender to custody, or
>
> (b) commit an offence while on bail, or
>
> (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

3. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare."

Sentences for murder

Section 1 of the Murder (Abolition of the Death Penalty) Act 1965 provides for the mandatory imposition of a sentence of life imprisonment automatically upon conviction for an offence of murder. A person convicted of other serious offences (e.g. manslaughter or rape) may also be sentenced to life imprisonment at the discretion of the trial judge in certain other cases where the offence is grave and where there are exceptional circumstances which demonstrate that the offender is a danger to the public and it is not possible to say when that danger will subside.

Over the years, the Secretary of State has adopted a "tariff" policy in exercising his discretion whether to release offenders sentenced to life imprisonment. This was first publicly announced in Parliament by Mr Leon Brittan on 30 November 1983 (Hansard (House of Commons Debates) cols. 505-507). In essence, the tariff approach involves breaking down the life sentence into component parts, namely retribution, deterrence and protection of the public. The "tariff" represents the minimum period which the prisoner will have to serve to satisfy the requirements of retribution and deterrence. The Home Secretary will not refer the case to the Parole Board until three years before the expiry of the tariff period, and generally will not exercise his discretion to release on licence until after the tariff period has been completed (per Lord Browne-Wilkinson, *R. v. the Secretary of State for the Home Department, ex parte T. and V.*, 1998 AC 407, at pp. 492G-493A).

Pursuant to section 34 of the Criminal Justice Act 1991 Act, the tariff of a discretionary life prisoner is fixed in open court by the trial judge after conviction. After the tariff has expired, the prisoner may require the Secretary of State to refer his case to the Parole Board which has the power to order his release if it is satisfied that it is no longer necessary to detain him for the protection of the public. A different regime, however, applies under the 1991 Act to persons serving a mandatory sentence of life imprisonment. In relation to these prisoners, the Secretary of State decides the length of the tariff. The view of the trial judge is made known to the prisoner after his trial, as is the opinion of the Lord Chief Justice. The prisoner is afforded the opportunity to make representations to the Secretary of State who then proceeds to fix the tariff and is entitled to depart from the judicial view (*R. v. Secretary of State for the Home Department, ex parte Doody* [1994] 1 Appeal Cases 531; and see the Home Secretary, Mr Michael Howard's, policy statement to Parliament, 27 July 1993, Hansard (House of Commons Debates) cols. 861-864).

COMPLAINTS

1. The applicant complains under Article 6 of the Convention that the trial was unfair for the following reasons, cumulatively and individually:

a) The time between the acts alleged and the trial was of such a length that combined with the nature of the evidence against the applicant, his ability to defend himself was so significantly impaired that he was unable to receive a fair trial. In particular, he was unable to trace witnesses to assist his defence; the delay made it more difficult to test effectively the prosecution's case; the first record of allegations was made 50 years' later, casting doubt on the reliability of the evidence; there was an absence of bodies or any forensic evidence; there were no exact dates, rendering it impossible to establish an alibi; witnesses' recollection rendered their evidence less reliable and the applicant's recollection and ability to instruct properly his legal representatives was diminished and impaired due to the passage of time.

b) Evidence was adduced of wrong doing beyond the indictment. The power and volume of this evidence gave rise to such a high possibility of prejudice and presumption of guilt so as to render the trial as a whole unfair and to breach the applicant's right to the presumption of innocence. Evidence going to two counts of murder, withdrawn from the jury at the close of the prosecution case, were so prejudicial that the continuation of the trial with the same jury violated Article 6. The evidence concerned general bad character and wrongdoing, e.g. that the applicant had stopped a girl smuggling food into the ghetto, that the applicant had been part of a group who had assaulted and set fire to an elderly Jewish man and allegations of inferred murder concerning persons last seen with the applicant being taken to a place of execution. The judge had also failed to direct the jury appropriately as to how to approach this evidence.

c) Untested evidence of a very prejudicial nature (a Waffen SS document) was adduced which the applicant was unable to challenge. The author of the document was not identified or summoned and it was used to support the allegation that the applicant had joined the German army following his time as a police officer in Domachevo. This admission of untried unreliable evidence was prima facie incompatible with the Convention and there was no opportunity to cross-examine the relevant witnesses in that regard contrary to Article 6 § 3(d) of the Convention.

d) The applicant's petition for leave to appeal to the House of Lords in respect of which the Court of Appeal had certified two points of law of public importance was refused without giving reasons.

2. The applicant complains that during the trial his bail was arbitrarily revoked and then returned, in breach of Article 5 of the Convention. He argued that he should have been released pending trial unless there were relevant and sufficient reasons to justify his continued detention. A

generalised concern was insufficient and any risks should have been identifiable and supported by evidence. The reinstatement after four days showed that there was no basis for the revocation in the first place. His detention was therefore not in accordance with a procedure prescribed by law. This also amounted to a breach of Article 3 of the Convention as this occurred at a time when great pressure was placed on the applicant by massive media attention, the duration of the trial which was about to end and in the light of his frailty through age and illness.

3. The applicant complained that the imposition of a mandatory life sentence violated Articles 3 and 5 of the Convention as being arbitrary and disproportionate.

It is also alleged that the conditions of detention imposed on him cause him exceptional hardship and prejudice. He is advanced in years and suffers from *inter alia*:

– diabetes, which is not being correctly treated;
– he is going blind in both eyes due to the diabetes;
– deafness in his left ear and very poor hearing in his right ear assisted by a hearing aid;
– pains to his chest due to a heart condition, for which he has been taken to hospital 6 or 7 times and in respect of which he had been prescribed pills;
– complaints of brain damage to the left side of his head, from which he constantly loses his balance, falls and suffers dizziness;
– difficulty in walking from swelling to the knees which x-rays reveal is untreatable (progressive degenerative disease);
– restricted movement of his right arm and swelling to the right hand;
– stiff back and inability to bend;
– difficulty in breathing causing difficulty in sleeping; and
– severe depression, for which he is receiving treatment.

It is alleged that these conditions are not being looked after properly.

THE LAW

1. The applicant complains that he did not receive a fair trial, invoking Article 6 § 1 which provides as relevant:

> "1. 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. ..."

The Court recalls that its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms

protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules, for example, on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law (the Schenk v. Switzerland judgment of 12 July 1987, Series A no. 140, §§ 45 and 46, and the Teixeira de Castro v. Portugal judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, § 34). It is not the role of the Court to determine, as a matter of principle, whether particular types of evidence may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained and used, were fair.

Turning to the circumstances of this case, the applicant has complained, firstly, that he was unable to obtain a fair hearing due to the length of time between the events under examination and the trial, a period of some fifty years. The Court notes that this indeed must have had an effect on the availability of evidence and that the lapse of time would have effected, to at least some degree, the memories of those witnesses who did come forward. However, the Convention does not impose any time-limit in respect of war crime prosecutions (see also the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968 and the European Convention on the Non-Applicability of Statutory Limitations to Crimes Against Humanity and War Crimes, 25 January 1974, both of which provide that statutory limitation periods shall not apply to the prosecution of those offences). Nor is the Court persuaded that any general requirement of fairness necessitates that such should be implied in Article 6. It is satisfied that in this case the burden of proof lay on the prosecution to establish beyond reasonable doubt that the applicant had committed the offences charged and that the applicant, who was represented by senior and junior counsel and solicitors, was afforded a fair and effective opportunity to put forward those matters in his favour, including arguments relative to the reliability of the evidence of witnesses. The judge in his summing-up emphasised to the jury these points and the Court of Appeal found no defect in the way in which he did so. This Court finds that no issue can arise under Article 6 insofar as the jury was left to decide for itself whether the evidence dating back to events in 1943 was credible and reliable. As the Court of Appeal pointed out, the key evidence in the case did not concern the purported identification, years after the event, of a suspected perpetrator of war crimes but the recollection by witnesses of shocking events, likely to have made a deep impact, which involved a person whom they already knew.

The applicant has also submitted that evidence went before the jury of wrongdoing not subject to charges on the indictment and the nature of this evidence was such as to cause the applicant's standing with the jury irreparable prejudice. This included evidence on two charges which were

later withdrawn from the indictment when the judge ruled at the end of the prosecution case that the evidence was insufficient as a matter of law to support a conviction. The Court recalls, however, that the judge dealt thoroughly in his summing-up to the jury with the evidence which could be relied on to support the remaining charges. It was made clear to the jury the permissible bases on which they were allowed to convict. It is true that the jury heard from witnesses of incidents in Domachevo implicating the applicant as a local police officer in other aspects of the persecution of Jewish members of the population. However, in the trial of a person for war crimes, it is not realistic to expect that the evidence can be restricted wholly to the specific counts alleged. It indeed may be relevant and necessary for a proper understanding of events that the context of the incidents be examined.

As regards the applicant's complaint that the jury were made aware of an old document which stated that he was a member of the Waffen SS (which he was unable to challenge as the author of the document was not known), the Court recalls that this matter was raised on appeal. The Court of Appeal however noted that the jury had been properly directed that this document was not proof that he was a member of the SS and that the point had only arisen since the applicant had, in his own case, sought to rely on other old records in his favour showing that he had served with the allies during the war. The Court agrees that the brief reference made to this document during the trial would not have had such an impact on the jury as to improperly or unfairly influence them against the applicant.

Finally, the applicant has complained that the House of Lords refused him leave to appeal without giving any reasons, even though the Court of Appeal certified that two points of law of public importance arose. It is correct that the Court's case-law states that courts are required by Article 6 § 1 to give reasons for their judgments (see, for example, the Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303, p. 12, § 29). However, courts are not required to give a detailed answer to every argument and the extent to which this duty to give reasons applies may vary according to the nature of the decision. The reasons for a decision may be also implied from the circumstances in some cases. In the case of applications for leave to appeal, which are the precondition for a hearing of the claims by the superior court and the eventual issuing of a judgment, the Court considers that Article 6 § 1 cannot be interpreted as requiring that the rejection of leave be subject itself to a requirement to give detailed reasons. In this case, there was no right of appeal to the House of Lords. It was a second and exceptional level of appeal for which leave was required and for which special requirements of public importance were imposed. Having regard to the fact that the applicant's appeal in the Court of Appeal had been examined in a hearing and a lengthy judgment given, the Court does not consider that the refusal of leave to appeal without specific reasons being

given infringed the requirements of Article 6 § 1 of the Convention (see also *Nerva v. the United Kingdom*, (dec.) no. 42295/98, 11 July 2000, unpublished).

In conclusion, the Court finds, on examination of the complaints individually and taken together, that the applicant was not deprived of a fair trial within the meaning of Article 6 § 1. These complaints must therefore be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant has also complained of the revocation of his bail shortly before the end of his trial, invoking Articles 3 and 5 of the Convention, which provide as relevant:

Article 3

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Court recalls that the trial judge decided on 25 March 1999 to revoke the applicant's bail with the result that he spent four nights in prison before bail was reinstated shortly before the end of the trial. The applicant's application to the High Court to review this decision was rejected on 26 March 1999.

The Court observes that subsequent court procedures, in particular, the applications for appeal to the Court of Appeal and House of Lords, concerned the applicant's conviction. These had no connection or relevance to his claims that the trial judge acted oppressively and unlawfully in revoking his bail in the way that he did.

Article 35 § 1 of the Convention requires that applicants introduce their complaints within six months of the final decision taken in the process of domestic remedies or, where no remedies exist, within six months of the events complained of. The final decision concerning the revocation of the applicant's bail was that of the High Court on 26 March 1999. The allegedly unlawful detention ended on 29 March 1999. In either case, since the

applicant lodged his application with the Court on 5 December 2000, these complaints must be regarded as having been introduced out of time.

This part of the application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

3. The applicant complains, lastly, that the imposition of a sentence of life imprisonment discloses a violation of Articles 3 and 5 of the Convention (set out above). He refers in particular to his advanced age and his significant health problems, which render imprisonment an exceptional hardship.

The Court recalls that matters of appropriate sentencing largely fall outside the scope of Convention, it not being its role to decide, for example, what is the appropriate term of detention applicable to a particular offence. Nonetheless it has not excluded that an arbitrary or disproportionately lengthy sentence might in some circumstances raise issues under the Convention (see, for example, *V. v. the United Kingdom*, [GC], no. 24888/94, ECHR 1999-IX, §§ 97-101, concerning life sentences imposed on juveniles; while the Commission expressed the view that a life sentence without any possibility of release might raise issues of inhuman treatment Weeks v. the United Kingdom, no. 9787/82, Commission Report 7 December 1984, § 72, and Kotalla v. the Netherlands, application no. 7994/77, Commission decision of 6 May 1978, Decisions and Reports (DR) 14, p. 238).

There is no prohibition in the Convention against the detention in prison of persons who attain an advanced age. Nevertheless, a failure to provide the necessary medical care to prisoners may constitute inhuman treatment and there is an obligation on States to adopt measures to safeguard the well being of persons deprived of their liberty (see *Kudła v. Poland*, [GC] no. 30210/96, ECHR 2000-XI, § 94). Whether the severity of the ill-treatment or neglect reaches the threshold prohibited by Article 3 will depend on the particular circumstances of the case, including the age and state of health of the person concerned as well as the duration and nature of the treatment and its physical or mental effects (see, for example, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

In the present case, the applicant has referred to his advanced age (79-80), health problems and inadequacies of treatment in prison as rendering imprisonment an exceptional hardship. Insofar as he complains of the conditions of his detention or the lack of medical treatment in the context of Article 3 of the Convention, the Court notes that he has not taken proceedings in the courts, where, due to the Human Rights Act 1998 in force since October 2000, he would now be able to rely directly on the provisions of the Convention. He has not therefore exhausted domestic remedies in that regard as required by Article 35 § 1 of the Convention. In the circumstances, the Court sees no basis for finding that the imposition of a sentence of

imprisonment on the applicant infringes the prohibition contained in Article 3. Nor, given the seriousness of the offences for which the applicant was convicted, can a sentence of life imprisonment be regarded as arbitrary or disproportionate in the context of Article 5 of the Convention.

Furthermore, there is no indication in the present case that the term of life imprisonment imposed has removed from the applicant any prospect of release. The Court notes that the Lord Chief Justice has recommended a tariff of five years. While the Home Secretary has not reached his decision on a tariff, any unreasonable decision on his part would be amenable to judicial review in the courts, where, again, the applicant would now be able to rely on the provisions of the Convention. The Home Secretary also has exceptional powers outwith considerations of tariff and parole to release prisoners on compassionate grounds.

The Court finds therefore no appearance of a violation of Articles 3 or 5 of the Convention in relation to the applicant's sentence and detention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Articles 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President