CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 19354/02
by Ian THOMAS
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 10 May 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mrs L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 8 May 2002 and to the observations of the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ian Thomas, is a United Kingdom national, who was born in 1961 and lives in Liverpool. He is represented before the Court by Mr C.J. Malone, a lawyer practising in Salford. The respondent Government are represented by Mr D. Walton, Foreign and Commonwealth Office.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The murder of Julie Christian

Prior to her death, at the age of 26, Julie Christian had lived with the applicant, who was two and a half years older than her, for seven years.

Ms Christian's body was discovered early on the morning of Wednesday 14 November 1990 in an alley behind the street where she had lived with the applicant. It was dressed in a blue tracksuit and had been covered in household rubbish and set on fire. Because the body was badly burned it was impossible to identify the exact time or cause of death, but it was possible to rule out shooting, stabbing, beating and strangulation, and forensic experts considered that Ms Christian might have died through suffocation or drowning. It appeared that Ms Christian had been dead before her body was burned and that the fire had been built around her. There was nothing in the fire to connect it with the applicant.

The applicant was charged with murder, which he denied.

It was the prosecution case that the applicant killed Ms Christian at home some time between midnight on Saturday 10 November 1990 and 1 p.m. on Sunday 11 November, and that he moved her body to the alley on Sunday night. The prosecution evidence included the following matters. On Saturday evening, after decorating at Ms Christian's grandmother's house all day, the applicant and Ms Christian returned home to find that a debt collector had left a card in relation to a GBP 1,000 bank loan which was overdue. The couple argued, and Ms Christian decided to stay at home while the applicant went to a public house to meet several members of her family. She spoke to her sister on the telephone at around midnight on Saturday, to say that the argument had been resolved and that she was feeling better. She promised to call her sister again the following day after the debt collector had visited. However, she did not make the call: this was the last any member of her family heard from her. The following day, Sunday, at 1 p.m. the debt collector called at the applicant's house. He gave evidence that the applicant, apparently very agitated and wearing shorts and a t-shirt, would not let him into the house but insisted that they talked in the collector's car. Shortly before 2 p.m. the applicant went to a do-it-yourself shop where he bought a decorating item. The prosecution alleged that this was an attempt by him to create an alibi since the purchase was timed and he kept the till receipt. He later visited members of Ms Christian's family, saying that she was missing and that he was looking for her, and thereafter was alone for only very short periods until the body was found. On Sunday night he returned home, accompanied by Ms Christian's sister and her boyfriend, and was able to tell the sister, within minutes of looking into the

wardrobe, that a blue tracksuit, a black jacket and skirt and a pair of black court shoes were missing.

Early on Monday morning the applicant reported Ms Christian's disappearance to the police. He was examined by a police doctor on Tuesday afternoon and found to have minor scratch marks on his face and chest which were assessed as being two to four days old, and not inconsistent with finger nail scratching. The applicant said that these had been caused either by decorating or by playing with his cat on Saturday: the police doctor was not able to exclude these causes either. None of the people who met the applicant in the public house on Saturday night could remember seeing the marks.

The applicant's house was searched on Wednesday and found to be very tidy (which was not, apparently, unusual). The bath mat and other items had been recently washed.

The applicant claimed that he and Ms Christian had agreed not to let the debt collector into the house, and that he had last seen her on Sunday afternoon when he had left to talk with the debt collector (in the applicant's account he was wearing jeans, not shorts). He believed that Ms Christian must have been killed by a stranger at some time after 1 p.m. on Sunday.

2. The two girls' evidence

On the evening of Monday 12 November one of the applicant's neighbours, Ms S., had told him that her eight-year-old daughter, SJS, had been playing in the street on Sunday afternoon and had told her that she had seen Ms Christian. The police interviewed SJS on Wednesday 14 November 1990, when she gave the following answers to their questions:

"Q: When do you remember seeing Julie?
A: Sunday.
Q: How do you know it was Sunday?
A: Because we never went to school and Mum said we could play out.
Q: Do you go to school on Saturday?
A: No.
Q: How do you know it wasn't Saturday?
A: Because on Saturday we had off and then it was Sunday. ...
Q: [SJS] was asked to stand and imagine she was stood on Teilo Street with her home address behind her; then asked to point which direction she saw Julie walking first.
A: Left
Q: Then what happened?
A: She went to the top of the street, turned round and walked the other way.
Q: Who was on the street?
A: Just Julie. ... [ED] and [two other children were] there too.
Q: Anybody else?
A: When Julie walked to the top of the street, when she turned, a man followed her.
Q: Where did the man come from?
A: The bottom of the street where Julie walked to, then turned.
Q: Did the man walk on the side of the street where your house is?
A: No where Julie walked on the number 9 side where [ED] lives and the man

followed her. ...
Q: Where did he go?
A: He went to the top of the street and then I didn't see him. Then 'cos Karl had to go in because he was still in his pyjamas.
Q: Did you see where Julie went to?
A: No. ...
Q: So when the man's gone to the end of your street he's gone left?
A: Yes.
Q: Did you see which way Julie went at the end of your street?
A: No. ...
Q: Can you remember anything unusual happening on Sunday when you were in the street? Did you hear anything?
A: No.
Q: What about the Orange Lodge, did you hear them? *[Added note: There was a marching band playing in the neighbourhood on Sunday afternoon]*
A: Yes.
Q: Did you?
A: Yes.
Q: What did you do when you heard them?
A: Standing at the corner ...
Q: Which one?
A: Number 9 side. ...
Q: What did you see?
A: Nothing because we missed them. ...
Q: Can you remember what Julie was wearing?
A: She had a big black coat on?
Q: Did she have anything on her legs?
A: PAUSE.
Q: Did you see her legs or did she have trousers on?
A: Can't remember.
Q: Can you remember anything else she had with her?
A: A big carrier bag.
Q: Anything else?
A: A handbag.
Q: What colour was the carrier bag?
A: White.
Q: Did it have any writing on it?
A: I can't remember.
Q: What colour was the handbag?
A: Black."

Another girl, ED, who was ten years old at the time, was also interviewed by the police on 14 November 1990 and gave a statement saying that she had seen Ms Christian followed by a stranger in Teilo Street between 2.30 and 3.30 pm on Sunday.

Both children were listed as prosecution witnesses and their evidence was served on the defence prior to the trial.

3. The first trial

The applicant's first trial took place in Liverpool Crown Court in January-February 1992. The applicant was represented by experienced

leading and junior counsel. It was not until the trial had started that the prosecuting counsel realised that the evidence of ED and SJS did not support the prosecution case. He therefore decided not to call the two girls but instead to tender them for cross-examination.

The judge, who approved this procedure, was asked by the defence counsel whether, before giving evidence, the girls could be shown the statements they had made to the police in November 1990.

ED was permitted by the trial judge to refresh her memory by reading her statement before going into the witness box, and she gave evidence consistent with her statement.

When SJS entered the court room she was very distressed. The judge refused to allow her to read or be reminded of her interview. His reasons for this decision were not clear, but the Court of Appeal in its judgment of 18 February 1994 speculated that it might have been because he had, wrongly, received the impression that the interview notes relating to SJS had not been signed by her and were not, therefore, reliable (in fact the notes had been read to her by the police officer at the time of the interview, and the girl had signed them as being an accurate record). In the witness box she was unable to remember being questioned by a police woman or seeing Julie Christian for the last time.

In the course of his summing-up the judge said, of ED's evidence: "Of course, it is not suggested by the prosecution that [ED] is trying to mislead you about the matter but young children do imagine things, particularly when they have been warned against strangers and cars and so forth, and it is suggested that [ED] is at best confused."

The jury retired to consider their verdict at 11.23 a.m. on Friday 7 February. The court subsequently adjourned until the following day, when the jury retired again at 10.02 a.m. They returned at 3.22 p.m., when they informed the judge that they had not reached a verdict, so he allowed them to continue their deliberations until 5 p.m., when he adjourned until 10 a.m. on Monday because the jury had still not reached an agreement. Finally, at 11.42 a.m. on Monday 10 February 1992, the jury convicted the applicant of murder, by a majority of 10 to 2. The judge duly sentenced him to life imprisonment.

4. The first appeal

The applicant appealed against conviction. In its judgment of 18 February 1994, the Court of Appeal observed that had the interview notes been put to SJS:

> "... it may be that her memory would have been refreshed, and she would have been able to fill in the gaps which her evidence undoubtedly left.
>
> In so doing, it may well be that she would have provided valuable corroboration for the other little girl, [ED], and it may be that that would then have provided the jury

> with testimony that would have been worrying, in the light of the crucial finding that the jury had to make as to the time of death. We can do no more than speculate about it.
>
> We are of the view that when cross-examining, [counsel for the defence] was entitled to use the earlier statement that this girl had made, because what she was telling the jury when she indicated that she could not help as to the time and movement of the deceased on the afternoon was plainly inconsistent with what she had told the police during the course of the interview much more proximate in time to the events of which she was being invited to speak.
>
> So, for whatever reason (and we do not seek to ascribe blame) there was here an unfortunate situation which in our judgment amounted to a material irregularity in the trial process."

The Court of Appeal therefore quashed the conviction and ordered a retrial, observing:

> "... we have come to the conclusion, after very anxious consideration, that this appellant is entitled to have a fresh jury consider the whole of this case. That is very unfortunate indeed, particularly with the passage of time that has occurred. ..."

5. The second trial

The retrial took place in October 1994. The defence team made several attempts to discuss the case with SJS and her parents before the trial started, but the parents were unwilling for SJS to give evidence and did not, therefore, make contact until the child was summonsed to attend as a witness on 21 October 1994 at the Crown Court. The applicant's solicitor then outlined the trial procedure to SJS and read her the statement which she had made to the police on 14 November 1990. SJS told the solicitor that she had no memory whatsoever of the matters referred to therein, and it was therefore decided that it would not be possible or appropriate to call her as a witness. ED was called, however, and again gave testimony consistent with her police statement.

Once again the trial judge (not the same judge who had sat in the first trial) told the jury, in relation to ED's testimony, to bear in mind that it could be difficult to know what reliance to place upon the evidence of a child.

The jury retired at 11.35 a.m. on Wednesday 25 October 1994. Shortly thereafter they sent a note to the judge asking to see ED's statement. In accordance with the rules of evidence the judge was obliged to refuse this request. The jury were unable to reach a verdict that day and the court adjourned overnight. At 3.20 p.m. on Thursday 25 October 1994 the jury convicted the applicant of murder by a majority of eleven to one.

6. The second appeal

The applicant again appealed, claiming that his conviction was unsafe in the light of the information given to the police by SJS in November 1990. On 19 March 1996 a differently constituted Court of Appeal rejected the appeal, holding as follows:

> "In our judgment there is no basis on which this conviction can properly be regarded as unsafe. In his attractive and skilful submissions, [the applicant's counsel] accepted, as we have said, that he could not point to any irregularity or to anything which could be said to have gone wrong in the second trial. The summing-up, he accepts, was meticulous. What was missing from the second trial, as from the first, was any evidence helpful to the defence from [SJS]. The absence of any such evidence was, as at the first trial, due to her complete inability to recall any potentially material events and, at the second trial, she was not called at all.
>
> This being so, we are unable to accept that this Court should entertain doubt about the safety of the conviction on the basis of material, namely [SJS's] interview by the police, which, being hearsay, was not and could not be before the jury and which is not and cannot be evidence before this Court.
>
> The retrial ordered by the Court of Appeal following the irregularity in the first trial was in order to enable [SJS] to give evidence after she had refreshed her memory from the contents of the interview, the assumption being that she might, in such circumstances, be able to give evidence helpful to the defence. As it turned out, this proved impossible at the second trial because she had no relevant recollection at all.
>
> It was certainly not contemplated at the time of the quashing of the first conviction that the terms of [SJS's] interview with the police could be placed before the jury, for that would have been to drive a coach and horses through the rules in relation to hearsay".

The court also commented that there was a "strong circumstantial case" against the applicant and that it entertained no doubt about the safety of his conviction.

7. The third appeal

On 2 March 1999 the Criminal Cases Review Commission ("CCRC") referred the applicant's conviction back to the Court of Appeal, because it considered, on the basis of newly discovered evidence, that there was a real possibility that the appeal court would find the conviction unsafe. The new evidence mentioned in the referral concerned the failure by the police to investigate or disclose telephone calls made on Tuesday 13 November and Wednesday 14 November 1990 informing them that two boys out playing on Tuesday afternoon had seen a human corpse on a junk yard about 500 metres from the street where the applicant and Ms Christian lived.

In the Grounds of Appeal prepared on his behalf the applicant also argued that his conviction was unsafe, *inter alia*, because the jury did not hear the evidence of SJS in support of ED.

The Court of Appeal, again differently constituted, gave judgment for the third time on 23 April 2002. Although the issue of SJS's evidence had not been included in the CCRC reference, the court held that, under section 14(5) of the Criminal Appeal Act 1995, it had jurisdiction to consider any ground of appeal relating to the conviction. However, it found that this ground raised no new argument that had not already been considered at the second appeal, and it held that, in the absence of new argument or evidence, the proper exercise of its power to depart from its previous reasoning or conclusions should be confined to "exceptional circumstances", for example, an intervening change in case-law or tension between the national statutory criteria for safety of a conviction and standards of fairness imposed by the European Convention on Human Rights. The court did not find that exceptional circumstances applied, and it therefore rejected this ground of appeal.

In addition, the court held that the evidence relating to the sighting by the two boys of a dead body lacked consistency and reliability, and, in view of the strong circumstantial case against Mr Thomas, did not afford a reason for regarding the conviction as unsafe.

B. Relevant domestic law and practice

1. Witnesses

It is a well established principle of English law that there is no property in a witness. In other words, the parties to civil or criminal proceedings may seek to obtain statements from any person who may be in a position to give material evidence in those proceedings.

2. Memory refreshing

A witness may refer to a document in order to refresh his memory provided that the document (a) was made or verified by him contemporaneously with the events in question; (b) is, in certain cases, the original; and (c) can be produced for inspection if called for by the court or the opposing party. Where a witness refers to a memory-refreshing document the evidence remains that which is given orally by the witness.

3. The rule against hearsay

The rule against hearsay evidence has been formulated as follows:

> "Any assertion other than one made by a person giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted": *Cross and Tapper on Evidence,* 8th ed., p. 46, approved by the House of Lords in *R. v. Sharp,* 86 Cr. App. R 274, 278.

The rule covers both assertions made by persons who do not give oral evidence and previous assertions by those who do. It covers oral statements and those contained in documents. If evidence falls within the hearsay rule, it will be inadmissible unless it falls within a statutory or common law exception.

Historically, the reason why hearsay evidence is inadmissible is because:

"It is not the best evidence and it is not delivered on oath. The truthfulness and accuracy of the person whose words are spoken to by another witness cannot be tested by cross-examination, and the light which his demeanour would throw on his testimony is lost": *Teper v R* [1952] AC 480, 486, *per* Lord Normands.

On 20 November 2003 the Criminal Justice Act 2003 received Royal Assent. Part 11 of Chapter 2 of the 2003 Act makes changes to the rules of evidence relating to the admissibility of hearsay evidence in criminal proceedings, with a view to simplifying the law and providing greater certainty as to the circumstances when hearsay evidence will be admitted. The relevant sections came into force on 4 April 2005. Section 120 of the 2003 Act provides (as relevant):

"(1) This section applies where a person (the witness) is called to give evidence in criminal proceedings.

(...)

(4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if –

(a) any of the following three conditions is satisfied, and

(b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.

(5) The first condition is that the statement identifies or describes a person, object or place.

(6) The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.

(7) The third condition is that –

(a) the witness claims to be a person against whom an offence has been committed,

(b) the offence is one to which the proceedings relate,

(c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,

(d) the complaint was made as soon as could reasonably be expected after the alleged conduct,

(e) the complaint was not made as a result of a threat or a promise, and

(f) before the statement is adduced the witness gives oral evidence in connection with its subject matter.

(8) For the purposes of subsection (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved."

In addition, the court will have a residual discretion to admit a hearsay statement into evidence if satisfied that it is in the interests of justice for it to be admissible (section 114(1)(d) of the 2003 Act).

COMPLAINT

The applicant complains under Articles 6 §§ 1 and 3 (d) of the Convention that, from the first trial to the final appeal, no satisfactory remedy was available to deal with the fact that the full evidence of SJS was never heard by a jury.

THE LAW

The applicant complains that he was denied a fair trial, in breach of Articles 6 §§ 1 and 3 (d) of the Convention, which provide:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...

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

(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; ..."

A. The parties' submissions

The Government submitted that the proceedings brought against the applicant, when viewed as a whole, were fair. At the first trial, SJS and ED were tendered by the prosecution to be cross-examined by the defence. Because of a misunderstanding, SJS was not allowed by the trial judge to refresh her memory from the written record of her interview with the police.

At the subsequent appeal it was held that the interview notes could and should properly have been used as a memory-refreshing document. The Government emphasised that, according to the relevant principles of domestic law, if SJS had been permitted to refresh her memory, but had nonetheless been unable to remember the events in question, the interview notes would not have been admissible as evidence of the truth of their contents. The admissible evidence would have been what SJS said under oath in the witness box. Moreover, it was only for tactical reasons that the defence did not seek to interview the witnesses and refresh their memories before the trial.

The failure to permit SJS to refresh her memory was found by the Court of Appeal to be a material irregularity, which it remedied by quashing the conviction and sending the case for re-trial.

The second trial was conducted in accordance with law. There was no application to stay the proceedings on the ground of unfairness. Both the prosecution and the defence were bound by the same rules of evidence. Defence counsel decided not to call SJS because she could not give any useful evidence. The Court of Appeal concluded that the conviction was safe.

The rules of evidence are designed to ensure fairness both to prosecution and defence. The applicant's argument, if correct, would require courts to decide cases on the basis of inadmissible evidence, which would undermine these rules. As the Court of Appeal in the second appeal judgment observed, for it to have assessed the safety of the conviction on the basis of inadmissible material of questionable value would inappropriately have undermined the jury's verdict. In broad terms, Article 6(3)(d) gives the accused the right to have a witness who gives evidence against him called to give evidence and be subjected to cross-examination. It amounts to a *prima facie* prohibition on the admission of hearsay evidence. There is no obligation under Article 6 to admit hearsay evidence, even where it purports to exonerate the accused: see the Commission's decision in *Blastland v. the United Kingdom*, no. 12045/86, 7 May 1987.

The applicant submitted that, viewed as a whole, the proceedings were unfair. The evidence of SJS and ED was critical, not just because if they were right in their observation of Ms Christian at that time the applicant could not have killed her, but also because each mentioned that Ms Christian was followed down the street by an unknown man. At the first appeal, the Court of Appeal found difficulty in understanding how the position had ever arisen whereby SJS was not permitted to be cross-examined on her statement, and had no hesitation in finding that this had given rise to a material irregularity. In ordering a retrial, the court referred to its “anxious consideration”, to the unfortunate passage of time and to the need to have a fresh jury consider “the whole of this case”.

The applicant drew attention to the repeated delays which were of particular significance in relation to the ability of the key child witnesses to recall the events in question. By the time of the second trial in October 1994 almost four years had passed since Ms Christian's death and it became clear, at a very late stage, that SJS could not remember anything about the events in question. To conclude the re-trial without her evidence rendered pointless the decision of the first Court of Appeal, and the second and third appeals failed to remedy this defect. The mischief was compounded by the fact that at each trial the judge warned the jury against accepting the evidence of ED, on account of her youth. Such an approach was inconsistent with a modern appreciation of child witnesses, especially those whose statement's were taken so soon after the event and without any possible issue of bias or contamination. It would have been very difficult for the jury to accept such a warning had both children given evidence.

The applicant did not contend that any of the courts which considered the case should have admitted hearsay evidence. In the circumstances, the second trial should not have taken place because by that stage it was impossible for the applicant to have a fair trial.

B. The Court's assessment

When assessing the fairness of criminal proceedings under Article 6, the Court cannot generally substitute its own appraisal of the facts or evidence for that of the domestic courts. Instead it must ascertain whether the proceedings in their entirety, including the way in which the evidence was taken, were fair (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34; *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports of Judgments and Decisions* 1996-II, § 67; *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, § 50; and more recently, *S.N. v. Sweden*, no. 34209/96, judgment of 2 July 2002, ECHR 2002-V, § 42).

The applicant complains, in essence, that the account which SJS gave to the police of seeing Julie Christian on Sunday 11 November 1990 was never properly conveyed to the jury.

At the applicant's trial in January-February 1992, SJS was available in court to be cross-examined by the defence counsel. She was, apparently, very distressed and intimidated by the experience of giving evidence in a murder trial, and was unable to remember anything about her last sighting of Ms Christian. The trial judge, wrongly, refused to allow her to refresh her memory by looking at her police statement. This was subsequently identified by the Court of Appeal as a material irregularity and a retrial took place. By the time of the second trial, however, almost four years after the events in question, SJS had forgotten everything, and was unable to give

any useful evidence even after having been reminded of what she had told the police.

The Court observes that the applicant's complaint is based on the premise that SJS's interview with the police was reliable and persuasive evidence, first, that Ms Christian was still alive on the Sunday afternoon, and, secondly, that she had been followed from her home by an unknown man. However, because of the circumstances outlined above, this can be a matter of conjecture only. It is impossible to tell, from reading the transcript of interview, what were SJS's demeanour and attitude as she answered the questions of the police; whether she was, for example, vague and hesitant or confident and forthright. The difficulty of assessing the credibility of an account from a written transcript is the rationale of the rule against hearsay evidence, and the reason why the document could not be taken into consideration at either of the trials or by the Court of Appeal.

The Commission considered the hearsay rule in its *Blastland* decision (cited above), and found that:

> "The purpose of the rule in the jury trial system is partly to ensure that the best evidence is before the jury, who can evaluate the credibility and demeanour of the witness, and partly to avoid undue weight being given to evidence which cannot be tested by cross-examination. The Commission finds the purpose of the rule legitimate, and not, in principle, contrary to Article 6 § 1 of the Convention."

The Court agrees. Because of these considerations, Article 6 §§ 1 and 3 (d) of the Convention contain a presumption against the use of hearsay evidence against a defendant in criminal proceedings. As in the *Blastland* case itself, such considerations also justify the exclusion of the use of hearsay evidence when that evidence may be considered as assisting the defence.

Moreover, it is primarily for the national authorities to formulate and apply rules governing the admissibility of evidence (see, for example, *Saidi v. France*, judgment of 20 September 1993, series A no. 261-C, § 43; *Bricmont v. Belgium*, judgment of 7 July 1989, Series A no. 158, p. 31, § 89; *S.N. v. Sweden,* § 44; *Mellors v. the United Kingdom*, dec., no. 57836/00, 30 January 2003). The fact that those rules have very recently been changed to allow the admission of hearsay evidence in certain defined circumstances (see Relevant Domestic Law and Practice above) cannot in itself cast doubt on the compatibility with the Convention of the former rules of evidence.

In any case, even assuming that SJS's answers to the police officer's questions contained a true and persuasive account of what she had seen, it is a point of pure speculation whether, given her young age and her distressed state of mind during the first trial, even if the child had been permitted to refresh her memory, she would still have been able to give a coherent version of events which had occurred fifteen months earlier, when she was eight.

Looking at the proceedings as a whole, the Court in addition finds it significant that two differently constituted Courts of Appeal considered whether, in the light of the second jury's lack of knowledge as to what SJS had told the police in November 1990, the applicant's conviction should be quashed. In both judgments, dated 19 March 1996 and 23 April 2002 respectively, the conviction was upheld and the view expressed that there was a strong circumstantial case against the applicant.

The Court concludes that taken as a whole the applicant's trial and appeal complied with Article 6 §§ 1 and 3(d) of the Convention. His complaints are manifestly ill-founded and must be rejected pursuant to Article 34 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President