CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 515/02
by Frank HENWORTH
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 16 September 2003 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 15 December 2001,

Having regard to the partial decision of 14 January 2003,

Having regard to the observations submitted by the respondent government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Frank Henworth, is a United Kingdom national, who is currently detained in HM Prison Long Lartin. He was represented before the Court by Mr C. Campbell Clyne, a lawyer practising in London.

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

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.

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 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.

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 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.

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 eighty four prosecution witnesses called to give evidence at the first trial, only thirty three were later called.

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.

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

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."

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

COMPLAINTS

1. The applicant complains that the criminal proceedings against him were not determined before the courts within a reasonable time contrary to Article 6 of the Convention. He also complains that the delay prejudiced the fairness of his final trial, in particular because unlike the prosecution witnesses he had no notes about the events some four years earlier.

2. He makes further complaints about the fairness of the trial and the alleged inadequacies of his representatives.

THE LAW

Commented [Note1]: The complaints section has been omitted as it is considered unnecessary if the complaint(s) is/are taken up in a clear manner in "The Law" section of the decision.

A. As to the length of proceedings

1. The parties' submissions

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 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 three 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 July 2000 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.

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.

As to the fairness of the trial, the Government observed that the issue was fully ventilated before the domestic courts. They submitted 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.

The applicant 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 submitted that the case was not complex and that, if anything the brutality of the murder simplified the issues the jury was called upon to decide. The applicant 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.

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.

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.

2. The Court's assessment

The Court recalls that the criminal proceedings began on 16 June 1995 when the applicant was arrested and ended on 17 June 2001 with the refusal of leave to appeal by the House of Lords. They therefore lasted 6 years and 1 day. The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

B. As to the remaining complaints

The applicant has recently submitted further complaints, largely directed to the alleged failure of his representatives to object to, and their involvement in, tampering with evidence, which he says occurred after

1995. He also alleges that the police allowed prosecution witnesses immunity in respect of drugs offences if they gave evidence against him.

The Court recalls that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken". Furthermore, where a complaint is not included in the initial application, the running of the six-months time limit is not interrupted until the date when the complaint is first introduced to the Court (see, for example, *Allan v. the United Kingdom*, no. 48539/99, ECHR 2002-VIII). The applicant's above complaints were first submitted by way of letter postmarked 1 April 2003. Insofar as they raise new issues, not related to the length of the proceedings, the complaints are out of time and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the length of the proceedings;

Declares inadmissible, the applicant's remaining complaints, which were introduced after the initial application.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President