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. 36429/97
by Robert EASTON
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 31 August 1999 as a Chamber composed of

Mr J-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr K. Jungwiert,
Mrs H.S. Greve,
Mr K. Traja, *Judges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 Decembre 1995 by Robert Easton against the United Kingdom and registered on 10 June 1997 under file no. 36429/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 17 July 1998 and the observations in reply submitted by the applicant on 7 January 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British national, born in 1956 and detained in Durham prison.

He is represented before the Court by Mr B. Row, a lawyer practising in Newcastle upon Tyne.

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

On 20 May 1994 the applicant and three other men were arrested following a series of armed robberies in Newcastle upon Tyne.

On 21 May 1994 all four men were charged by the police with conspiracy to rob, an offence allegedly committed between February 1993 and May 1994.

Three other men were arrested subsequently and charged with the same offence of conspiracy to rob.

On 23 May 1994 the applicant was remanded in custody by a Magistrates' Court. Various applications for bail by the applicant were refused on the grounds that he was likely to abscond, to commit further offences or to interfere with witnesses.

Committal papers were served on the applicant's legal representatives on or about 17 August 1994. The applicant's representatives requested an “old style” committal hearing.

On 21 November 1994 the applicant and the six co-accused persons were committed to the Crown Court for trial.

The Government claim that in December 1994 the defence were given access to certain transcripts of audio tapes of conversations between the defendants. These had been recorded unbeknownst to the latter at the police station where they had been detained for questioning about their part in the robberies. The applicant disputes this.

On 25 February 1995 the applicant and the co-accused appeared before the Crown Court and pleaded not guilty. The case was adjourned for trial. The trial date was fixed for May 1995. However, an adjournment was ordered at the request of the defendants' representatives because counsel were not all available to represent them on the relevant dates.

The applicant claims that the transcripts of the audio tapes were disclosed to the defence on 23 August 1995 following a number of requests. On 28 September 1995 the defence requested the disclosure of the audio tapes themselves.

A new hearing date was fixed for 4 December 1995. On that date the case was taken out of the list at the request of the representatives of some of the applicant's co-accused who had not had sufficient time to consider some of the prosecution evidence, particularly the audio tapes.

The trial was re-fixed to commence on 15 April 1996. On 2 April 1996 the lawyers of some of the defendants applied for a further adjournment in order to consider the audio-taped evidence. The application was refused by the trial judge who, nevertheless, set aside 15 and

16 April for the defendants' representatives to listen to the tapes using equipment hired by the prosecution. Then a defendant, W, indicated that he considered changing his plea and on 19 April 1996 the trial was adjourned.

The trial restarted on 30 April 1996. W pleaded guilty and indicated that he would give evidence for the prosecution against his co-defendants. On 2 May 1996 the applicant pleaded guilty to conspiracy to rob. All the other co-defendants also changed their pleas to guilty.

On 20 May 1996 the applicant was sentenced to eleven years' imprisonment.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention of the length of the proceedings.

PROCEDURE

The application was introduced on 8 December 1995 and registered on 10 June 1997.

On 4 March 1998, the European Commission of Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 17 July 1998, after an extension of the time-limit fixed for that purpose.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

The applicant replied to the Government's observations on 7 January 1999.

THE LAW

The applicant complains under Article 6 § 1 of the Convention of the length of the proceedings against him.

Article 6 § 1 of the Convention provides as follows:

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

The Government submit that the case was complex because of the number of defendants involved and the nature of the offence and of the evidence. The applicant was in part responsible for the adjournment ordered in May 1995. The authorities were not responsible for the adjournment ordered in December 1995, especially since the representatives of the applicant's co-defendants had had since December 1994 to verify the

tapes. A further short adjournment ordered in April 1995 cannot be blamed on the authorities either. Finally, the Government ague that it was essential that the applicant be tried together with his co-conspirators.

The applicant submits that the case was not complex. The one-year delay before the initial date of the trial in May 1995 was unacceptable. Contrary to what the Government argue, the applicant was ready to proceed in May 1995. The Government accept that the applicant was not responsible for the adjournment of December 1995. In so far as the Government claim that the applicant's co-defendants were to blame, the applicant points out that it is not true that the transcripts of the tapes had been made available to the defendants' representatives in December 1994. The truth is that the transcripts were disclosed following an application by the defence only on 23 August 1995. On 28 September 1995 the defence applied for the disclosure of the tapes themselves. As a result, the applicant's co-defendants cannot be blamed for applying for an adjournment in December 1995 in order consult the audio tapes further. The applicant did not ask for an adjournment in April 1996. In any event, the authorities should have taken steps so that the trial of a person in custody would not last two years.

The Court recalls that, according to its case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular 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 and the conduct of the applicant and of the authorities dealing with the case (Eur. Court HR, Pelissier and Sassi v. France judgment of 25 March 1999, to be published in Reports of Judgments and Decisions 1999, § 67). Where a person is kept in detention on remand, the fact of his detention is a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (Eur. Court HR, Abdoella v. the Netherlands judgment of 25 November 1992, Series A no. 248-A, p. 17, § 24).

The Court considers that the period to be taken into consideration started on 20 May 1994, when the applicant was arrested, and ended on 20 May 1996, when he was sentenced. The length of the proceedings under examination is, therefore, two years.

The Court also considers that, although the proceedings against the accused were of some complexity because of the number of defendants and robberies underlying the charges, this could not, on its own, justify a length of two years at one single instance, especially since the applicant was detained on remand.

The Court further considers that the applicant himself did not contribute to the duration of the proceedings. In particular, there is no evidence that it was the applicant who requested an adjournment in May 1995.

However, the Court notes that the authorities were not directly responsible for any delays either. In particular, the authorities cannot be criticised for the year that elapsed between the applicant's arrest and the first date set for the trial. A certain amount of time is required for the investigation of a case, the committal proceedings and the preparation of the hearing in all jurisdictions under the supervision of the Court. Moreover, all the subsequent delays in the present proceedings were the result of the requests for adjournment submitted by the applicant's co-defendants in May 1995, December 1995 and April 1996.

It is true that delays arising out of the joinder of the proceedings against an applicant with those against other persons can give rise to liability under the Convention (cf. Eur. Court HR, Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 21, § 63). However, the Government submit in this connection that trying the applicant together with his six co-accused was in the interests of the proper administration of justice. The Court notes that the applicant never complained about this aspect before the domestic courts. Nor did he seek to demonstrate before the Court that it would not have been detrimental to the proper administration of justice to have severed the proceedings against him from those against his co-accused in order to expedite them.

The applicant has limited himself to observing that the authorities were themselves responsible for the delays arising out of the adjournment of December 1995 because they had failed to make certain evidence available to his co-defendants' representatives earlier. The Court notes that the parties disagree as to when the defence had access to this evidence for the first time. However, even assuming that the applicant's version of events is correct and that his co-defendants' representatives had had access to the audio tapes for the first time around 28 September 1995, the Court considers that they had ample opportunity to study this evidence between that date and 4 December 1995 when the trial had been originally scheduled to take place. It follows that the authorities cannot be blamed for the delays resulting from the adjournment requested by the applicant's co-defendants on 4 December 1995.

Given all the above, the Court considers that the delays in the proceedings must be attributed to factors for which the authorities cannot be held responsible, such as adjournments resulting from the justified joinder of the proceedings against the applicant to those against his co-accused. Moreover, even though the applicant was detained on remand, the Court considers that the overall length of the proceedings was not such that the authorities were required to make a positive effort to expedite them, as the applicant contends. It follows that no appearance of a violation of the right to a hearing within a reasonable time under Article 6 § 1 of the Convention is disclosed in the circumstances of the case.

As a result, the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be declared inadmissible in accordance with Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S Dollé
Registrar

J.-P. Costa
President