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. 30900/02
by Anthony JONES
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 9 September 2003 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 19 August 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Anthony William Jones, is a United Kingdom national, who was born in 1961 and is detained in HMP Risley. He was represented before the Court by Mr N. Melville, a lawyer practising in Liverpool.

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

A. The circumstances of the case

1. The offence and trial

The applicant and a co-accused were charged with conspiracy to rob a post office on 18 August 1997. Three masked men had broken into the post office through the wall of an adjoining, unoccupied shop. When the post office staff arrived for work in the morning, six of them had their hands cuffed or taped behind their backs, five were also blindfolded, and the Post Master had a knife held against his throat and threats made to himself and his family. The three robbers took GBP 85,000. One of the men was able to escape with the money by car, but the applicant was caught close to the post office by police officers who had chased him from the scene. At the time of his arrest he was wearing clothing seen by officers on one of the men running from the post office, and forensic evidence later found particles of rubble from the hole in the wall in his clothes. The co-accused was also arrested shortly after the robbery. When questioned by the police, neither suspect made any comment.

The applicant and his co-accused were released on bail and granted legal aid. They were arraigned in January 1998; both defendants pleaded not guilty, requested a large number of prosecution witnesses to attend the trial and were again released on bail. The trial was listed to begin on 9 March 1998 but was adjourned at the request of the defence. Later that month each defendant breached his bail conditions by failing to report daily at his local police station. On the date fixed for the start of the trial, 1 June 1998, the applicant and his co-accused did not surrender. A warrant was issued for their arrest and the case was relisted for 5 October 1998. They had not been arrested by that date and the judge, Judge Holloway, adjourned for one day then held a hearing to decide whether the trial should commence in the absence of the defendants.

Defence counsel informed the judge that the applicant's solicitors and those representing the co-accused had withdrawn from the case in the absence of instructions from their client and that, as a matter of professional conduct, he considered that he was unable to continue to represent the applicant. Counsel for the Crown asked the judge to exercise his discretion to allow the trial to proceed in the absence of the defendants. The judge ruled as follows:

> "There are before me two competing positions. Both defendants are still absent and neither their solicitors or their counsel have felt it appropriate for them to remain with this case in the absence of their clients. ...
>
> So I am faced with a situation today where counsel on behalf of the prosecution is inviting me, notwithstanding the absence of the defendants and counsel and solicitors,

for this case to proceed primarily because these two defendants have quite voluntarily absented themselves for the last six months of any contact with the court, knowing full well that they face very serious allegations.

There are 35 live witnesses due to give evidence today, some of whom are civilians who must have experienced a quite terrifying event when they were held up by armed, masked men and this robbery took place. Some of the civilian witnesses have already indicated that they are less than happy to attend on a future occasion. Some of the prosecution witnesses have already been dispensed with because of that concern that they have about continual delay.

The information I am led to believe suggests, although there is nothing concrete about this, that the two men are in Spain. One of the men's families has also left his normal home. There is no concrete evidence, as I say, to suggest that they are in Spain so that any extradition proceedings could commence, that is just the intelligence that the officers have."

The judge observed that he was not aware of any legal authority which dealt with the question whether it was possible to commence a trial in the absence, from the outset, of the accused, although there were reported cases where trials had been continued when the defendant became unable to attend part of the way through. He continued:

"In normal circumstances I am bound to say that my reaction initially to the proposition was that it would seem wrong to pursue any criminal trial, and particularly one as serious as this, in the absence of either a defendant or indeed in the absence of any assistance from counsel or solicitors on their behalf.

But on the other hand there is another competing interest which seems to me to take precedence over that particular one and that is that there are 35 witnesses outside court who have come here for the second time today and who are anxiously awaiting the prospect of having to give evidence and in view of the defendants' deliberate absenting of themselves the trauma that some of them experienced during the course of this incident is unlikely to go away until such time as they actually have had this case finally dealt with either with the defendants pleading guilty, which is obviously not their intention, or indeed the trial taking place and a jury coming to a decision.

Having, as I indicated earlier, given very anxious consideration to what is a novel point in my view and having sought the assistance both from the Court of Appeal Criminal Appeals Office and also from colleagues who have considered the matter with me over lunch I have come to the conclusion that the proper way of exercising my discretion in this most unusual case is for me to allow the case to proceed in the absence of both defendants.

I am conscious that the consequence of that is likely to be that the defendants are likely to be found guilty by the jury because of the absence of the defendants and the absence of representation but this is a strong case for the prosecution where clearly the defendants have frustrated and deliberately frustrated the authorities in trying to have this case finally concluded.

I also have to bear in mind the convenience and consideration of a very large number of witnesses, many of whom, as I have indicated, have no doubt anxiously waited for today's date to come and are frustrated at the prospect that they would have

> to wait many months if we were to wait for these defendants to be found somewhere else in the world and brought back to this country. I cannot in all conscience feel it is appropriate that those witnesses should be made to wait for what could be 6, 12, 18 months, two years or some other period of time well into the future by which time some may not be willing to give evidence, some may have passed on, some may have gone to another part of the world, emigrated, all sorts of problems can arise which would then be to the advantage of these absent defendants.
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> At the end of the day, as I say, I have come after anxious consideration to the decision that this is a case that, unusually, should proceed in the absence of both defendants and their counsel and solicitors.
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> I have also given consideration as to what I ought to say to the jury when they come into court and are sworn and realise that there is nobody here, either the defendants themselves or their representatives, and all I can do is to make sure that anything I say in no way prejudices the position of the defendants at all.
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> As I have discussed with [the prosecution counsel] already, the way in which this case has to proceed is in accordance with the law, irrespective of the fact that the defendants are absent and there is no counsel here to defend either one of them.
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> Precisely the same process will be gone through and both [counsel] and myself will give anxious consideration to any matter that we think that might have had some advantage as far as the defendants are concerned and to make sure that this is highlighted during the currency of the evidence. In that way if there is any material that assists either defendant we will make sure that it is properly put before the jury in a fair manner so that the jury can come to a decision on the facts available to them."

At the close of the prosecution case the judge directed the jury that they should not draw any inference of guilt from the defendants' failure to answer police questions or to appear for trial. He also instructed them to consider whether the forensic evidence, which strongly suggested that the accused had made the hole in the Post Office wall and/or clambered through it, had been planted by the police or tampered with in any way and pointed out that there was no fingerprint or DNA evidence incriminating the two defendants.

The applicant and the co-accused were convicted and sentenced to thirteen years' imprisonment. The applicant was arrested a year later and sentenced to an additional concurrent term of twelve months for breach of bail.

2. The Court of Appeal's judgment

The applicant, represented by solicitors and counsel, was granted leave to appeal out of time against conviction and sentence. In January 2001 the Court of Appeal gave joint judgment in his case with two other appellants who had also been convicted in their absence (*R. v. Hayward; R. v. Jones; R. v. Purvis* [2001] EWCA Crim 168).

Lord Justice Rose, giving the judgment of the Court of Appeal, held that, in the light of domestic and European case-law, the principles which should

guide the English courts in relation to the trial of a defendant in his absence were as follows:

> "(1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
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> (2) Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial, behaves in such a way as to obstruct the proper course of the proceedings and/or withdraws his instructions from those representing him.
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> (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
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> (4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
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> (5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular,: (i) the nature and circumstances of the defendant's behaviour in absenting himself from trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings; (iii) the likely length of such an adjournment; (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation; (v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence; (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; (vii) the risk of the jury reaching an improper conclusion about the absence of the defendant; (viii) the seriousness of the offence, which affects defendant, victim and public; (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates; (x) the effect of delay on the memories of witnesses; (xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospect of a fair trial for the defendants who are present.
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> (6) If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and ion the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits. In summing up he must warn the jury that absence is not an admission of guilt and adds nothing to the prosecution case."

Lord Justice Rose added that he saw no necessity for a defendant who was released on bail to be expressly warned that, if he absconded, he might be tried in his absence, "for that has been the English common law for over a century".

He reviewed the facts of the applicant's case in the light of the above general principles and concluded that the trial judge had exercised his discretion entirely properly. At the hearing on 4 January 2000 it had been conceded by the applicant's counsel that the applicant's failure to surrender for trial had been deliberate and that he had been aware of his obligation to attend and of the possible consequences of his non-attendance. Lord Justice Rose held that the applicant had clearly and expressly, through his conduct, waived his right to be present and legally represented at trial, and that the trial had been as fair as was possible given that the defendant had waived these rights. Although the defendant had been present and represented during the appeal proceedings, he had made no application to bring fresh evidence and no submission had been made on his behalf to suggest that the forensic evidence linking him to the robbery was unreliable or that, if he had been present and/or represented at trial any innocent explanation could have been brought forward for the contamination of his clothing, his presence in the vicinity of the robbery or fleeing from the police, or that he was unconnected with a walkie-talkie found near the scene. In conclusion, the Court of Appeal found no reason to hold that the conviction was unsafe or that the trial had been unfair. It did, however, reduce the applicant's sentence from thirteen to eleven years' imprisonment.

3. The House of Lords' judgment

The applicant appealed for leave to appeal to the House of Lords, and the Court of Appeal duly certified a question as being one of general public importance, namely: "Can the Crown Court conduct a trial in the absence, from its commencement, of the defendant?" The House of Lords gave judgment on 20 February 2002 (*R. v. Jones (Anthony)* [2002] UKHL 5). Although the House of Lords judges were unanimous in agreeing that the appeal should be dismissed, they gave different reasons for this conclusion.

Lord Bingham of Cornhill, with whom Lords Nolan and Hutton agreed, observed that the Court of Appeal's finding that the applicant had waived his right to trial in his presence had not been challenged and was tenable: while there was no direct evidence to show that the applicant knew what the consequences of his absconding would be, nor was there evidence to suggest a belief on his part that the trial would not go ahead in his absence or that, although absent, he would continue to be represented. The applicant's "decision to abscond in flagrant breach of his bail conditions could reasonably be thought to show such complete indifference to what might happen in his absence as to support the finding of waiver". Lord Bingham added, however, that: "If, contrary to my opinion, the Court of

Appeal were wrong to make the finding of waiver, and I am wrong to accept it, I would none the less hold that the appellant enjoyed his Convention right to a fair trial, for all the reasons given by my noble and learned friend Lord Rodger of Earlsferry".

Lords Hoffmann and Rodger of Earlsferry, however, disagreed that the applicant could be said to have waived his rights. In the words of Lord Rodger:

> "[The] facts certainly justify the inference that the appellant knew that he would not be present when his trial was due to take place. That does not, in itself, justify the conclusion that he had waived his right to be present or represented at any trial of the charges against him. Such an inference could be drawn only if one could be satisfied that the appellant not only knew that the trial was due to take place when he would be absent, but also knew that it *could* take place even though he was not there and even though he was not represented. ... In the circumstances of this case, ... neither inference can readily be drawn.
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> So far as the first is concerned, it is sufficient perhaps to notice that the initial reaction of the very experienced judge, Judge Holloway, was that no trial could take place in the absence of the defendants. He had never heard of such a thing and neither had the colleagues with whom he consulted. An official at the Criminal Appeals Office thought it might be possible - but he could not put his finger on a case. It would, I believe, be rash to attribute to the applicant greater knowledge of the arcana of English legal procedure than Judge Holloway and his colleagues actually possessed. Doubtless, the appellant would have been aware that, if eventually brought to justice, he would be punished for absconding to avoid trial. But I see no proper basis for going further and assuming that he would actually have known that he was liable to be tried and sentenced in his absence. I am accordingly unable to draw the conclusion that the appellant had unequivocally waived his right to be present at any trial.
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> The inference that he had waived his right to representation at any trial of the charge against him is even more difficult. One would have to infer that the appellant knew that, if the court decided to proceed to try him in his absence, it would do so in a situation where no counsel or solicitor was there to represent him on the very serious charge of conspiracy to rob. In fact, at the hearing on 6 October 1998, the appellant was unrepresented from the outset, while the counsel and solicitor for his co-defendant withdrew from acting at the hearing. We were told that, in certain other cases, when a trial has proceeded in the absence of the defendant counsel have agreed to remain in court and to act, even in a limited way, on behalf of the defendant. The Court of Appeal ... indeed envisaged that this might happen in future cases and that the presence or absence of representation would be a factor to be considered by the judge in deciding whether the trial should proceed in the absence of the defendant ... . There is nothing in the Court of Appeal's narrative of the facts to show whether the appellant knew that no counsel or solicitor would appear on his behalf at the hearing on 6 October or that the trial judge was likely to exercise his discretion by going on with the trial without the appellant being represented. In these circumstances I am again unable to conclude that, merely by deliberately absconding, the appellant had unequivocally waived his right under Article 6 § 3(c) of the European Convention to be represented by counsel at any trial of the charges against him.
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> For these reasons I prefer to deal with the case on the basis that the appellant had not unequivocally waived his right to be present or to be represented under Article 6

> § 3(c). His absence simply meant that he was not in a position to exercise either of these rights when the judge decided to proceed with the trial. The question then comes to be whether there has been a breach of the appellant's rights under Article 6. As [counsel for the Crown] submitted, that question falls to be determined on a consideration of the whole of the proceedings, including those in the Court of Appeal."

His Lordship then examined the entirety of the proceedings against the applicant. He observed that the exercise of the trial judge's discretion to try the applicant in his absence had been exceptional and had taken account of the applicant's deliberate decision to abscond and the needs and interests of the victims, witnesses and the wider public, as well as those of the accused. In the Court of Appeal the applicant had been present, legally aided and represented. The evidence against him had been strong and the applicant had not availed himself of the opportunity open to him during the appeal proceedings to bring fresh evidence to counter the merits of his conviction. The proceedings taken as a whole had therefore been fair.

B. Relevant domestic law and practice

1. The ground of appeal against conviction

Section 2(1) of the Criminal Appeal Act 1968 ("the 1968 Act"), as amended by the Criminal Appeal Act 1995 ("the 1995 Act"), provides a single, composite right of appeal against a criminal conviction. It states that the Court of Appeal:

> "(a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
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> (b) shall dismiss an appeal in any other case."

The broad intention behind this provision was summarised by the then Lord Chief Justice, Lord Bingham, in *R. v. Graham and Others* ([1997] vol. 1 Criminal Appeal Reports p. 302 [Court of Appeal]), when he said:

> "This new provision ... is plainly intended to concentrate attention on one question: whether, in the light of any arguments raised or evidence adduced on appeal, the Court of Appeal considers a conviction unsafe. If the Court is satisfied, despite any misdirection of law or any irregularity in the conduct of the trial or any fresh evidence, that the conviction is safe, the Court will dismiss the appeal. But if, for whatever reason, the court concludes that the appellant was wrongly convicted of the offence charged, or is left in doubt whether the appellant was rightly convicted of that offence or not, then it must of necessity consider the conviction unsafe. The Court is then subject to a binding duty to allow the appeal."

The scope of the "safety test" was discussed by Lord Bingham C.J. in his judgment in *R v. Criminal Cases Review Commission, ex parte Pearson* [2000] 1 Criminal Appeal Reports 141 (Court of Appeal) (after the hearing of the applicant's appeal), where he stated:

"The expression 'unsafe' in section 2(1)(a) of the 1968 Act does not lend itself to precise definition. In some cases unsafety will be obvious, as (for example) where it appears that someone other than the appellant committed the crime and the appellant did not, or where the appellant has been convicted of an act that was not in law a crime, or where a conviction is shown to be vitiated by some serious unfairness in the conduct of the trial or significant legal misdirection, or where the jury verdict, in the context of other verdicts, defies any rational explanation. Cases however arise in which unsafety is much less obvious: cases in which the Court, although by no means persuaded of an appellant's innocence, is subject to some lurking doubt or uneasiness whether an injustice has been done... If, on consideration of all the facts and circumstances of the case before it, the Court entertains real doubts whether the applicant was guilty of the offence of which he has been convicted, the Court will consider the conviction unsafe."

This passage was subsequently cited by the Court of Appeal in the case of *R v. Davis, Rowe and Johnson* [2001] 1 Criminal Appeal Reports 8, where Lord Justice Mantell, delivering the judgment of the court, stated that:

"The following is not intended to be an exhaustive statement of the principles involved. We simply extract the following. The Court is concerned with the safety of the conviction. A conviction can never be safe if there is doubt about guilt. However, the converse is not true. A conviction may be unsafe even where there is no doubt about guilt but the trial process has been 'vitiated by serious unfairness or significant legal misdirection' ... Usually it will be sufficient for the Court to apply the test ... which, as adapted by [counsel for the Crown], might read:

'Assuming the wrong decision on law or the irregularity had not occurred and the trial had been free from legal error, would the only reasonable and proper verdict have been one of guilty?'."

Later in his judgment, Lord Justice Mantell stated that:

"We are satisfied that [the questions of 'fairness' and 'safety'] must be kept separate and apart. The E.C.H.R. is charged with inquiring into whether there has been a breach of a Convention right. This court is concerned with the safety of the conviction. That the first question may intrude upon the second is obvious. To what extent it does so will depend upon the circumstances of the particular case. We reject, therefore, [counsel for Johnson]'s contention that a finding of a breach of Article 6 (1) by the E.C.H.R. leads inexorably to the quashing of the conviction. Nor do we think it helpful to deal in presumptions. The effect of any unfairness upon the safety of the conviction will vary according to its nature and degree."

2. New evidence in the Court of Appeal

Section 23 of the Criminal Appeal Act 1968 provides, in so far as relevant, as follows:

"(1) For the purposes of this part of this Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice –

(a) order the production of documents, exhibits or other thing connected to the proceedings, the production of which appears necessary for the determination of the case;

(b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Court whether or not he was called in active proceedings; and

(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(2) The Court of Appeal shall, in considering whether to receive any evidence have regard in particular to:

(a) whether the evidence appears to the Court to be capable of belief;

(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal;

(d) whether there is reasonable explanation for the failure to adduce the evidence in these proceedings.

...

(4) For the purposes of this part of the Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness where attendance might be required under sub-section 1(b) above to be conducted in a manner provided by the rules of the Court, before any judge or officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court."

COMPLAINT

The applicant complains under Article 6 of the Convention that he was both absent and unrepresented for his trial in the Crown Court.

THE LAW

The applicant claims that the proceedings against him breached Article 6 of the Convention, which states:

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

2. ...

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

...

(c) to defend himself in person or through legal assistance of his own choosing ...;

... ."

The applicant contends that it must always be contrary to the provisions of Article 6 to try a defendant who is absent and unrepresented throughout the proceedings. In the alternative, he argues that, even if his absence and lack of representation did not automatically give rise to a violation of the Convention, in the circumstances of his particular case the trial judge's decision to proceed denied him the right to a fair trial which the later appeals did not cure. Any purported waiver of a right guaranteed by the Convention must be established in an unequivocal manner.

He submits that the Crown Court proceedings, described by Judge Holloway as "such an unequal contest ... [which] offends against one's sense of fairness" must have breached Article 6 and that the appeals to the Court of Appeal and House of Lords did not involve a fresh determination of the merits of the charge. The House of Lords has no power to hear fresh evidence, since appeals to it are on points of law of general public importance, and although the Court of Appeal can admit evidence under section 23 of the Criminal Appeal Act 1968, its case-law provides that it will do so only if satisfied that "the evidence could not with due diligence have been obtained for use at the trial" (*per* Lord Justice Sachs, *R. v. Beresford*, 56 Crim. App. R. 143, 149).

As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaints under both provisions taken together (see *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, § 29). In deciding whether the proceedings against the applicant were fair, it must consider them as a whole, including the decision of the appellate court (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-A, § 34).

While it is of capital importance that a defendant in criminal proceedings should be present during his or her trial - both because of the right to a hearing and because of the need to verify the accuracy of the defendant's statements and compare them with those of witnesses (see the above-mentioned *Poitrimol* judgment, § 35) - proceedings held in the absence of the accused are not incompatible with the Convention if the person concerned can subsequently obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact (see the above-mentioned *Poitrimol* judgment, § 31). Moreover, it is open to question whether this latter requirement applies when the accused has waived his right to appear and to defend himself. In order to be effective for Convention purposes, such a waiver must be established in an unequivocal

manner and be attended by minimum safeguards commensurate to its importance (ibid.). For example, the Court considers that before an accused can be said to have impliedly, through his conduct, waived an important right under Article 6 it must be shown that he could reasonably have foreseen what the consequences of his conduct would be.

In the present case, the Court notes that the applicant was aware of the date set for the start of his trial, and deliberately chose not to attend. However, as Lord Rodger of Earlsferry observed in the House of Lords, at the time of the applicant's trial it was not clearly established under English law that it was possible to try an accused in his absence throughout. The Court considers that the applicant, as a layman, cannot have been expected to appreciate that his failure to attend on the date set for the commencement would result in his being tried and convicted in his absence and in the absence of legal representation. It cannot be said, therefore, that he unequivocally and intentionally waived his rights under Article 6 (see, *mutatis mutandis*, *Pfeifer and Plankl v. Austria,* judgment of 25 February 1992, § 38).

The Court notes, however, that following his arrest the applicant was permitted to appeal against conviction, despite the expiry of the relevant time limit. He was present at the hearing before the Court of Appeal and had full legal representation at public expense.

Under section 23 of the Criminal Appeal Act 1968 it would have been open to the applicant to apply to have new evidence put before the Court of Appeal. He could have made use of this right if he had considered that there were matters relevant to his conviction which were not taken into account by the Crown Court because of the circumstances of his trial. However, he chose not to request the admission of new evidence or to make any submission to suggest that the forensic evidence linking him to the robbery was unreliable or that if he had been present and/or represented at trial any innocent explanation could have been brought forward for the contamination of his clothing, his presence in the vicinity of the robbery or fleeing from the police, or the other incriminating evidence presented by the prosecution at trial.

The Court considers that, given the Court of Appeal's power to hear fresh evidence, it would have been possible for the applicant to seek a fresh determination of his conviction if there had been any evidence at his disposal to challenge it. Against this background, the Court finds that the proceedings taken as a whole were fair and that the applicant's complaint under Article 6 is manifestly ill-founded.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President