CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## SECOND SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 48864/99
by Mark James TAYLOR
against the United Kingdom

The European Court of Human Rights, sitting on 3 December 2002 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 22 March 1999 and registered on 18 June 1999,

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, Mark James Taylor, is a United Kingdom national, who was born in 1983 and lives in London. He is represented before the Court by Breeze, Benton & Co., Solicitors, London. The Government are represented by their Agent, Ms J. Foakes, Foreign and Commonwealth Office, London.

## A. The circumstances of the case

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

On 25 March 1997 the applicant along with another youth (C.) were arrested by the police for suspected involvement in offences relating to the theft of a ring and causing severe injuries to its owner, a boy aged 11. The victim was rendered unconscious as a result of the attack and had to be detained in hospital for three days. He was treated for multiple and extensive bruising to his face and head as well as to the rest of his body.

At the time of the commission of these offences, the applicant was aged 14 years and 24 days.

On 3 April 1997 the applicant, who had earlier been released on bail, was formally charged with the offence of robbery contrary to section 8 (1) of the Theft Act 1968. He was again released on bail and attended Stratford Youth Court for the first time on 7 May 1997. C. failed to attend and a warrant was issued for his arrest.

At the first hearing before Stratford Youth Court on 7 May 1997, the applicant's lawyer obtained a two-week adjournment to allow him to consider the case outline served by the Crown Prosecution Service ("CPS"). At the hearing, although the matter was discussed, no decision was taken as to the court's jurisdiction to sentence the applicant, if convicted, under section 53(2) and (3) of the Children and Young Persons Act 1933 ("the 1933 Act"). The applicant was released on bail.

At the resumed hearing on 21 May 1997, Stratford Youth Court stated its intention to commit the applicant to the Crown Court for trial, given that the Crown Court had greater sentencing powers. The proceedings were adjourned until 16 July 1997 to enable the case to be prepared for committal.

At the hearing on 16 July 1997, the CPS withdrew the robbery charge and replaced it with charges of theft contrary to section 1 of the Theft Act 1968 and assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861 ("the 1861 Act"). Stratford Youth Court accepted jurisdiction over these charges since they were within its sentencing remit. The applicant pleaded not guilty. The case was adjourned for two weeks to allow the CPS to obtain and review further medical evidence with a view to a possible preferment of a more serious charge of causing grievous bodily harm with intent, contrary to section 18 of the 1861 Act.

According to the applicant, the CPS created unnecessary delay by not reviewing the charges earlier. There was no reason why the trial date could not have been fixed at the 16 July hearing and the medical evidence submitted in due course. Instead, Stratford Youth Court allowed a two-week adjournment to enable the CPS to review the medical evidence. In the

applicant's view, the CPS should in any event have known the extent of the victim's injuries by 16 July 1997, without having to be given a two-week adjournment to review the medical evidence.

At the next hearing on 30 July 1997, Stratford Youth Court fixed a pre-trial review hearing for 8 October 1997 and the trial for 4 November 1997. The medical evidence sought by the CPS was still not available. However, the CPS did not request a further adjournment.

On 8 October 1997 Stratford Youth Court had to adjourn the pre-trial review since the co-accused C. had failed to attend. The pre-trial review was adjourned until 15 October 1997. On that occasion, the date of the trial was fixed for 20 and 21 November 1997. According to the Government, the applicant's representative did not object to these dates. The applicant denies this and states that objection was made regarding further delay.

On 20 November 1997 the applicant failed to attend Stratford Youth Court. An application by the CPS to proceed in his absence was refused. A warrant was issued for his arrest.

The applicant turned up at Stratford Youth Court on 21 November 1997. He stated that he had forgotten that he was due to attend court the day before. The court adjourned the proceedings to 26 November 1997 so that arrangements could be made for another trial date to be set.

At the directions hearing on 26 November 1997,Stratford Youth Court fixed the date of the pre-trial review hearing for 17 December 1997. The trial was set down for 12 March 1998.

The pre-trial review had to be adjourned twice and was eventually held on 25 February 1998 and again on 4 March 1998. On the latter occasions the defence made submissions on disclosure of materials in the possession of the CPS. The applicant points out that the CPS should have disclosed the materials requested at a much earlier stage of the proceedings, for example at the hearing on 17 December 1997.

In the meantime the applicant had turned fifteen on 1 March 1998.

On 12 March 1998, 340 days after the applicant was first arrested and 11 days after his fifteenth birthday, trial commenced. The victim gave evidence and was cross-examined by live video link. The defence made unsuccessful applications for disclosure of evidence and to have other evidence excluded at the trial, especially the victim's evidence identifying the applicant and his co-accused.

On 13 March 1998 the applicant was convicted of theft and assault occasioning actual bodily harm. Stratford Youth Court, pursuant to section 37 of the Magistrates' Court Act 1980 ("the 1980 Act"), committed the applicant to Snaresbrook Crown Court for sentence, being of the view that its powers of sentencing were inadequate and that the applicant should be given a heavier sentence than it had power to impose.

On 17 June 1998 Snaresbrook Crown Court adjourned the case to 18 August 1998 so that pre-sentence reports could be prepared. On that date

His Honour Justice Smith, sitting with two lay justices, sentenced the applicant to 18 months' detention in a Young Offender institution.

The applicant was given leave by a Single Judge to appeal to the Court of Appeal against his sentence.

Before the Court of Appeal counsel for the applicant contended that the sentence handed down was unlawful on the grounds that the fact that the applicant has passed his fifteenth birthday during the proceedings, but before conviction, meant that he should be liable only for the same penalties as a fourteen-year old. Accordingly, he maintained, a sentence of detention in a Young Offender institution could not be passed on him.

On 22 September 1998 the appeal was refused. In dismissing the appeal, Mr Justice Turner stated:

> "The simple truth is that [the applicant] was indeed fortunate not to have been charged with, and then convicted of, the even more serious offence of robbery. ... We consider that for the circumstances of the offence ... any right-thinking member of the public would have been appalled if the result had not been the deprivation of liberty of those who committed these offences against such a young boy and with such obvious violence and persistence which were involved in this case. It is urged upon us that because the co-accused has absconded and there was a delay of about 18 months between the commission of the offence and sentence, this would have enabled the court to impose a sentence of custody in a young offender institution. That sentence became available because [the applicant] had turned 15 between the date of the offence and the date of sentence. As a submission, that is entirely accurate. As a submission that leads this court to doubt the correctness of the sentence passed on [the applicant], we not only doubt, we profoundly disagree. In any event it would have been open, given the seriousness of the offences with which [the applicant] was charged and been found guilty, to have considered sentencing under the provisions of section 53 of the Children and Young Persons Act 1933."

The applicant's request for an extension of the time-limit for an application to the Court of Appeal to have a question of public importance certified for an appeal to the House of Lords was refused on 29 January 1999. Lord Justice Rose stated:

> "It may be some comfort to those who have appeared on behalf of this applicant to be reminded that in any event a case in which a sentence has been passed which was within the discretion of the sentencing court cannot properly be regarded as a point of law of general public importance worthy of consideration of the House of Lords."

## B. Relevant domestic law

### *1. Sentencing and young offenders*

There are three kinds of criminal offences in English law:

a) summary offences (triable only in the Magistrates'/Youth Court);

b) "either way" offences (triable either in the Magistrates'/Youth Court or on indictment in the Crown Court); and

c) indictable offences (triable only in the Crown Court).

The offences of which the applicant was eventually convicted and sentenced (theft and assault occasioning actual bodily harm), were "either way" offences.

If an offender is aged under 21, neither the Crown Court nor a Magistrates' Court can pass a sentence of imprisonment, but they can pass a sentence of detention in a Young Offender institution. If the magistrates consider that their power of sentencing is inadequate, as occurred in the applicant's case, they may commit an offender to the Crown Court for sentence.

A person under 18 – a juvenile – is normally tried in a Youth Court. According to section 24(1) of the Magistrates' Courts Act 1980, a juvenile must be tried in a Youth Court, subject to defined exceptions, including where the magistrates sitting in the Youth Court consider that a juvenile accused, charged with particularly serious offences, could properly be sentenced under section 53(2) and (3) of the Children and Young Persons Act 1933 if he were convicted on indictment (see below). In that event, the juvenile will be tried in the Crown Court.

A Youth Court's sentencing powers are less extensive than those of the Crown Court. At the time the applicant came to be sentenced, the only form of custodial sentence available to the Youth Court was detention in a Young Offender institution. Moreover, at the material time detention in a Young Offender institution was only available in respect of offenders whose age on the date of conviction (according to the Government) was 15 (as in the applicant's case), 16 or 17. In this connection, section 1A of the Criminal Justice Act 1982 provided at the date of the applicant's conviction:

> (1) Subject to section 8 below and to section 53 of the Children and Young Persons Act 1933, where -
>
> "(a) an offender under 21 but not less than 15 years of age is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over; and:
>
> (b) (...)
>
> the sentence that the court is to pass is a sentence of detention in a young offender institution."

The Youth Court was restricted to a maximum sentence of six-months' detention in a Young Offender institution for a single offence or a total maximum of twelve months where, like the applicant, the offender was convicted of two offences triable either way.

Pursuant to section 37 of the Magistrates' Courts Act 1980, if a Youth Court found a 15, 16 or 17 year old guilty of an indictable offence or "either way" offence (as in the applicant's case), and it was of the opinion that the offender should be sentenced to more than six-months' detention in a Young Offender institution (or twelve months' detention in the case of an offender like the applicant convicted of two offences), then it could commit him to the Crown Court to be sentenced. Following committal, the Crown Court could then pass a sentence of up to 24 months' detention in a Young Offender institution for the offence (section 1B of the Criminal Justice Act 1982), or deal with the offender in any way in which the Youth Court could have dealt with him. Detention in a Young Offender institution can only be imposed *inter alia* if the offence was one of violence and the court was of the opinion that only a custodial sentence would be adequate to protect the public from serious harm, or that offence was so serious that only a custodial sentence could be justified.

In the case of offenders aged 14 or under (like the applicant at the date of the commission of the offences of which he was eventually charged and convicted), the Youth Court may, *inter alia*, impose a fine, make a compensation order or make a supervision order. It has no power in law to sentence an offender under the age of 14 to a Young Offender institution for summary or "either way" offences. In addition, it has no power to commit such children to the Crown Court for trial or for sentencing. There are exceptional circumstances in which children of 14 may receive a custodial sentence. Thus, according to section 53 of the Children and Young Persons Act 1933, a young person aged between 10 and 17 may be given a custodial sentence if he is convicted of an offence, such as robbery, punishable in the case of an adult with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law. Of relevance to the applicant's case, under section 7 of the Theft Act 1968 the maximum sentence for an adult convicted on indictment of an offence of theft is seven years' imprisonment. Of equal relevance to the applicant's case, under section 47 of the Offences Against the Person Act 1861 the maximum sentence for an adult convicted on indictment of an offence of assault occasioning actual bodily harm is five years' imprisonment.

*2. Date for determining age and applicability of sentencing provisions*

According to the Government, in English law the basic rule for determining what power the court has in relation to sentencing an offender is his age at the date of conviction. The age at the date of conviction rule, as opposed to the date of sentence, was approved by the Court of Appeal in *R. v. Danga* ([1992] Q.B. 476) and later in *R. v. Pespane* (13 Cr. App. R (S) 438), *R. v. Robinson* (14 Cr. App. R. (S) 48) and *R. v. Starkey* (15 Cr. App. R. (S) 576).

The applicant draws attention to his view that section 29 of the Children and Young Persons Act 1963 contradicts the age-at-the-date-of-conviction-rule. This section makes provision for defendants who reach their eighteenth birthday after their case has begun in the Youth Court. It reads:

> "Where proceedings in respect of a young person are begun ... for an offence and he attains the age of 18 before the conclusion of the proceedings, the court may deal with the case and make any order which it could have made had he not attained that age."

If a juvenile has not attained his or her eighteenth birthday at the time of plea, the Youth Court has the power to hear the case and impose sentence. If the defendant's eighteenth birthday falls after the plea and before final disposal of the case, the Youth Court may nevertheless sentence the defendant as if he or she was still a juvenile. If, however the juvenile has reached age 18 by the time he or she is asked to enter a plea to the offence, the court must treat him or her as an adult (*R. v. Islington North Juvenile Court*, *ex parte Daley* [1983] AC 347). In *R. v. West London Justices ex parte Siley Windit* (reported in *Criminal Law Review 2000, p.p. 926-927),* the Divisional Court held that the relevant age for determining a juvenile accused's right to elect for jury trial was his age on the date he entered a plea of guilty.

The applicant further points out that the domestic case-law relied on by the Government is of limited value to the applicant's case since there are no decisions dealing with the situation of a fourteen-year old who becomes fifteen before conviction and thus moves from a non-custodial to a custodial bracket.

## COMPLAINTS

The applicant complains that as a result of the delays in proceeding with his case he received a heavier penalty than the one applicable and appropriate to him at the time of the commission of the offence. The applicant invokes Article 7 of the Convention.

The applicant further complains under Article 6 § 1 of the Convention that he was denied his right to a fair trial within a reasonable time since he was the victim of excessive procedural delays, with the consequences which that entailed for his sentence.

With reference to Article 5 §§ 1 and 5 of the Convention, the applicant further states that his detention in a Young Offender institution amounted to an unlawful deprivation of his liberty and that he had no enforceable right to compensation.

# THE LAW

1. The applicant maintains that had it not been for the delay of Stratford Youth Court and the Crown Prosecution Service (CPS) in proceeding with his case, he would have been sentenced as a fourteen-year old child and would have received either an attendance order or a supervision order, and not the severe custodial sentence eventually imposed on him. The applicant invokes Article 7 of the Convention, which provides:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In reply, the Government state that the relevant statutory provisions were completely certain in their scope and application at the time the applicant was advised by his lawyers. They stress that the Crown Court imposed a sentence of detention in a Young Offender institution and that that sentence was available to the court at the time the applicant committed the offence. For that reason, the applicant cannot maintain that the court applied a statutory provision retrospectively. It was entirely foreseeable to the applicant and/or his legal advisers that, if convicted after the age of fifteen, the applicant would be liable to be committed to the Crown Court and would thereby be eligible to receive a term of detention longer than the term which could have been imposed in the Youth Court. For the Government, it was equally foreseeable – given the circumstances of the assault – that the applicant's case would take longer to conclude than the average Youth Court case, with the result that he might receive a custodial sentence if convicted at the age of fifteen.

The applicant states that the domestic courts failed to have regard to the fact that he was only fourteen years' old at the time of the offence and that the trial process had commenced at a time when he could not have anticipated that he might be sentenced to a term of detention. At the time of his not-guilty plea, it could never have been foreseen that his trial would have entered his fifteenth year. Even when the trial was set down for November 1997 it was not foreseeable or relevant to consider the consequences of the trial being subsequently adjourned. In his submission, the only real guarantee he had to protect his rights and legitimate expectation of a non-custodial penalty would have been to plead guilty when still fourteen. He maintains that, for reasons of public policy, fourteen-year old children should not be forced into that situation in order to avoid the risk of a lengthy term of detention when it is their intention to

protest their innocence in respect of the charges against them. The applicant stresses that he was eventually charged with theft and assault causing actual bodily harm. At the time of the commission of these offences, the Youth Court could not have imposed any form of detention.

The Court observes that the applicant, then fourteen, was initially charged with the offence of robbery. Had he been tried and convicted of that offence before reaching his fifteenth birthday it would have been open to the Crown Court to impose a sentence of detention in a Young Offender institution (see section 53 of the Children and Young Persons Act 1933). In that event, the applicant could not have relied on Article 7 to dispute the imposition of a custodial sentence: he could not have maintained that the penalty was heavier than the one foreseen at the time of the commission of the offence with which he was charged or that the relevant provisions were unforeseeable as regards either their scope or application. The applicant's legal advisers must be taken to have been aware of this risk in the early stages of the proceedings, given the serious nature of the initial charge and the clear terms of section 53 of the Children and Young Persons Act 1933.

The robbery charge was later replaced with charges of theft and occasioning actual bodily harm. It is undisputed that a custodial sentence could not have been passed on the applicant if he had been convicted of these offences before reaching his fifteenth birthday. However, the Court does not agree with the applicant's submission that the relevant legal provisions at the time (section 1 A and B of the Criminal Justice Act 1982 and section 37 of the Magistrates' Courts Act 1980) were uncertain or unpredictable as to the manner of their application to young accused persons who move from one age bracket to another in the course of criminal proceedings.

It recalls in this connection that it has had occasion to stress in the context of its judgments under Article 7 that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*), from which it follows that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision, if need be with the assistance of the domestic courts' interpretation of it, what acts and omissions will make him liable and, it would add for the purposes of the instant case, what penalties can be imposed (see the *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, § 52; *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, ECHR 2001-II, § 50).

It notes that the offences of which the applicant was convicted were clearly defined in statute and that statute also defined the sentencing powers of the domestic courts with respect to young offenders convicted of such offences as well as the age of the offender for the determination of the sentence. Although the applicant disputes its reliability as a point of reference, it must be noted that, long before the date of the commission of

the offences with which he was ultimately charged and convicted, the case-law of the domestic courts under section 1A and B of the Criminal Justice Act 1982 had already identified the age for determining sentence as the age of an offender at the date of his conviction. For the Court, the domestic courts have, through a process of statutory construction, endeavoured to introduce coherence to the question of age and corresponding sentencing powers and to promote a unified approach in this area, notwithstanding any perceived inconsistencies referred to by the applicant and to the absence of any court ruling on the position of fourteen-year old offenders who turn fifteen before the date of their conviction. It follows that the applicant cannot maintain that a heavier penalty was imposed on him than the one applicable at the date of the commission of the offences in question. It is to be noted that the applicant had at all stages the benefit of legal advice and representation, and it was for his legal advisers to clarify any ambiguity in the interpretation of the governing sentencing provisions with reference to the above-mentioned domestic court decisions.

The Court would add there was no guarantee that the proceedings against the applicant, at least as regards the question of his guilt or innocence, would be concluded before he turned fifteen. It is to be noted that the applicant contested the charges against him. He must be considered to have taken a risk that the proceedings would evolve in a way which was favourable to his interests, if eventually found guilty. It does not find that the applicant had any legitimate expectation that his trial would have been wound up before he attained the age of fifteen. This is to suppose, unreasonably and inaccurately as it transpired, that trial proceedings involving serious and contested accusations run smoothly to a timely conclusion; nor can any such legitimate expectation be based on the fact that the Crown Prosecution Service dropped the initial charge of robbery. This decision could not reasonably be construed as a guarantee that the risk of attracting a custodial penalty, in the event of a verdict of guilt, had passed, still less that the trial would be over before the applicant turned fifteen.

For the Court, and for the above reasons, the circumstances relied on do not disclose any appearance of a breach of Article 7. The imposition of a custodial penalty on the applicant was prescribed by law in sufficiently clear and accessible terms and was applied to the applicant without any element of retroactivity. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant states that he was arrested on 25 March 1997 and sentenced on 18 August 1998, a delay of one year, four months and twenty-five days. This delay, he submits, must be considered in the circumstances of his case to amount to a breach of Article 6 § 1 of the Convention, which provides as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government agree in principle with the applicant's view of the period to be taken into consideration, including his view that the relevant period runs from the date of the applicant's arrest (25 March 1997) and not the date of charge (3 April 1997). This being said, they consider that the period between the date of the applicant's conviction (13 March 1998) and the date of his sentence (18 August 1998) was not relevant to the outcome for the applicant in terms of sentence since he was fifteen by that stage.

The Government deny that the length of the period relied on by the applicant was unreasonable. They contend that the proceedings were inevitably somewhat complex, given that the applicant and his co-accused as well as the victim – the principal prosecution witness – were all minors. The original robbery charge was serious, and careful consideration had to be given in the early stages to a possible transfer of the case to the Crown Court for reasons of sentencing jurisdiction. The decision to prefer alternative charges had to be carefully assessed by the CPS before deciding on 16 July 1997 to charge the applicant with assault and theft. Although relatively long for a summary trial, it had to borne in mind that the defence sought on the second day to have the victim's evidence of identification of the applicant and his co-accused, C., excluded. Furthermore, there was an additional complicating factor: the victim had to be examined and cross-examined by a live video-link.

As to the conduct of the authorities, the Government observe that the police acted diligently between the date of the applicant's arrest and the date on which he was charged. Both the Youth Court and the Crown Court conducted the proceedings with all due expedition and in a way which respected the interests of a minor accused of a very serious offence and the rights of the victim, also a minor. Thus, the mode of trial was determined by the Youth Court on 21 May 1997 as scheduled, and the case adjourned for a committal hearing. At that hearing, held on 16 July 1997, the trial judge acceded to the prosecution's application to withdraw the robbery charge and to prefer instead charges based on assault and theft. A two-week adjournment was granted to the prosecution to allow it obtain and review further medical evidence with a possible view to bringing more serious assault charges against the applicant under section 18 of the Offences against the Person Act 1861. A pre-trial review hearing was held on 15 October 1997 and the dates of the trial fixed for 20 and 21 November 1997. The proceedings had to be adjourned since the applicant failed to attend on 20 November. Owing to pressure of business in the Youth Court, the next available dates for a two-day hearing were 12 and 13 March 1998.

The Government stress that had the applicant attended court on 20 November 1997 he would have been convicted and sentenced earlier than the eventual date of his sentence.

The applicant submits that the length of the proceedings could not be explained in terms of the complexity of the case since the main issue before the court was one of identity. The fact that the trial lasted two days is no indication of its complexity and the Government cannot rely on complexity simply because pre-trial reviews had to be organised or that the prosecution had to prove at the trial the ingredients of the charges or that submissions were made by the defence. If anything, examination and cross-examination of the victim by live video-link only served to expedite the conduct of the trial and, contrary to what the Government assert, cannot be regarded as a complicating factor or a reason for not fixing a date for the trial in advance of the date finally retained.

The applicant submits that the length of the proceedings must be attributed to the way in which the Youth Court and the CPS dealt with the case. For the applicant, no explanation has been given for the delay of the CPS in preferring the theft and actual bodily harm charges, in reviewing the victim's medical evidence and in failing to disclose to the defence materials in its possession. The applicant can only be faulted for having failed through oversight to appear at the beginning of the trial fixed for 20 November 1997. On that last point, the applicant considers that it would have been unlikely that the trial would have been concluded as originally planned, given the many problems linked to the non-disclosure of evidence by the CPS which surfaced in the period leading up to the eventual trial in March 1998.

The applicant refers to the 1997 Home Office Report ("No More Excuses – A New Approach to Tackling Youth Crime in England and Wales") wherein it is stated that in 1996 the average time taken to complete a case in the Youth Court was, as in 1989, 131 days, which is in marked contrast to the 353 days it took in the present case from the date of the offence to the date of his conviction.

In contrast, the Government observe that, in accordance with information collected from 157 Youth Courts in 1999, the longest time recorded for defendants between the date of the offence and the date of committal to the Crown Court for sentencing was 422 calendar days. In ninety-five per cent of these cases, the time between the offence and committal to the Crown Court was 310 days or less, and in ninety per cent of the cases this period was 207 calendar days or less.

The Court notes that the period from the date of the offences to the date of the applicant's conviction was 353 days, and from the date of the offences to sentence 481 days. Like the parties, it is prepared to accept that the period to be considered began to run from the date of the offences (25 March 1997). That date coincided with the date of the applicant's arrest and his release on bail, with the obligation to report back to the police station on 3 April 1997. He was accordingly substantially affected by reason of the decisions taken on 25 March 1997 (see *Foti v. Italy*, judgment of

10 December 1982, Series A no. 56, p. 18, § 52). It further notes that the applicant has not sought to include within the time-frame to be assessed the period between the date of his sentence (18 August 1997) and the date on which the Court of Appeal refused his application for an extension of the time-limit for appealing to the House of Lords (29 January 1999). The Court considers that, in these circumstances, it will confine its examination of the reasonable time requirement to the period between the date of the offence/arrest and the date of the applicant's sentence.

It reiterates that had the proceedings been terminated before the date of the applicant's fifteenth birthday a custodial sentence could not have been imposed on him. Accordingly, in assessing the length of the proceedings from the standpoint of its established criteria under Article 6 § 1, namely the complexity of the case, the conduct of the applicant and that of the relevant authorities, it must also give due weight to what was at stake for the applicant in the proceedings (see *Philis (No. 2) v. Greece*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

The Court is prepared to assume that the length of the proceedings cannot be explained in terms of the substantive complexity of the case against the applicant, even having regard to the fact that the applicant disputed the charges against him.

At the same time, it notes that there were various procedural matters which had to be dealt with, and which inevitably had a bearing on the progress of the proceedings. However, it considers that these procedural matters, even if they did slow down the disposal of the case, cannot be viewed as having given rise to periods of unnecessary delay on the part of the domestic courts and of the prosecuting authority. Thus, the Court is unwilling to criticise the CPS for not having initiated charges of theft and assault at a much earlier stage. The attack on the victim was extremely violent. The CPS cannot be faulted in the circumstances for first preferring a robbery charge, with the result that Stratford Youth Court had to adjourn the proceedings until 16 July 1997 to enable the case to be prepared for committal to the Crown Court.

There was a two-week delay after the new charges had been preferred. However, it is to be noted that the CPS was actively considering the possibility of laying further charges against the applicant if the medical evidence justified this. It does not consider that Stratford Youth Court can be faulted for acceding to the CPS's request for a two-week adjournment, given the public interest in tailoring the charges to reflect the seriousness of the offence.

For the Court, what is important is the fact that Stratford Youth Court was anxious to set a date for the case to be tried as quickly as possible. This it did on 30 July 1997. However, the trial could not take place on the date fixed (4 November 1997) on account of the failure of the applicant's co-accused to attend the pre-trial hearing. Another date was fixed, this time for

20 and 21 November 1997, almost eight months after the applicant's arrest and almost four months after the new charges had been preferred against him. The applicant failed through an oversight to attend the opening of the trial and it had to be postponed. Even if the applicant can be excused his oversight on account of his youth, it nevertheless remains the case that the responsibility to secure his attendance lay with his legal advisers. Their failure to secure his attendance meant that the trial had to be set down for the next available dates, namely 12 and 13 March 1998, with the consequences which that entailed for his sentence if convicted. Although the applicant maintains that the trial would not have gone ahead on 20 and 21 November 1997 since his defence team was pressing the CPS for disclosure of documents, it considers that this is speculative and cannot be advanced as a reason for imputing unnecessary delay either to the domestic court or to the CPS.

The applicant was eventually convicted on 13 March 1998 and sentenced on 18 August 1998. The applicant has not claimed that between his conviction and sentence there were periods of delays which were imputable to the authorities. The Court for its part does not perceive any, and notes, in line with the Government's observations, that any delay between the applicant's conviction and his sentence was irrelevant to what was at stake for him. As from the date of his conviction, he was facing a period of detention in a Young Offender institution.

Having regard to these considerations, the Court does not find in the circumstances of this case that the applicant's submissions disclose any appearance of a breach of the reasonable-time requirement. It has had due regard to what was stake for the applicant in having a timely answer to the charges against him, and to the general desirability that the criminal justice system should take account of the special needs of young offenders in having charges against them determined speedily.

It observes that there was no strategy on the part of the CPS to delay the proceedings beyond the applicant's fifteenth birthday in order to expose him to the risk of a custodial penalty in the event of a finding of guilt. On the contrary, the CPS pressed for the trial to go ahead in the applicant's absence on 20 November 1997. The fact that the time-table for trying the case was disturbed at the last minute by the applicant's failure to attend the opening of the trial must engage his and his legal adviser's responsibility.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant states that he was wrongly sentenced with the result that he was detained in breach of Article 5 § 1 of the Convention and had no right to claim compensation for his unlawful detention in a Young Offender institution, in breach of Article 5 § 5.

The Government disagree, having regard to their arguments under Articles 6 and 7.

The Court observes that the sentence of detention in a Young Offender institution imposed on the applicant must be considered to be the "lawful detention of a person after conviction by a competent court" within the meaning of Article 5 § 1a. Accordingly, the applicant's complaint under Article 5 § 1 and his related complaint under Article 5 § 5 do not disclose any appearance of a breach of these provisions.

It follows that these complaints are also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President