CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33107/96
by Barry John TIERNEY
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 23 March 1999 as a Chamber composed of

Mr J-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
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 29 April 1996 by Barry John Tierney against the United Kingdom and registered on 23 September 1996 under file no. 33107/96;

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 30 December 1997 and the observations in reply submitted by the applicant on 24 August 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1961 and currently detained in HM Prison Old Elvet, Durham. Before the Court, he is represented by Mr. B.T. Row, a solicitor practising in Newcastle. The facts of the case, as submitted by the parties, may be summarised as follows.

On 17 June 1993 the applicant was arrested and, together with his brother, charged with burglary and conspiracy to commit burglary. After being charged, the applicant and his brother were released on conditional bail.

Committal papers were served on the defence on 21 September 1993, following the completion of the police investigation. The applicant's representatives requested an "old style" committal hearing, which would have involved hearing oral evidence from ten prosecution witnesses over two days. It was not possible for the North Tyneside Magistrates Court to schedule a two-day hearing before 4 January 1994. On that date the defence decided to proceed on the basis of written statements under the shortened committal procedure (provided for by section 6(2) of the Magistrates Courts Act 1980). The case was then committed for trial to Newcastle Crown Court.

On 25 February 1994 there was a pre-trial hearing to ascertain the pleas of the accused and to give directions for trial. The applicant and his brother pleaded not guilty and were released on bail.

In a letter received on 21 April 1994, the applicant's solicitors wrote to the court asking for the case not to be listed for eight weeks to enable them to obtain the report of a forensics expert. In a letter received on 8 June 1994, they asked for a further delay of six weeks. Finally, in a letter received on 8 July 1994 they asked that the trial not be listed until September or October 1994 to enable them to obtain medical evidence.

The trial, which was estimated to require three weeks and involve hearing evidence from 58 witnesses, was listed for 3 July 1995. However, the applicant failed to appear at the trial. In his application he explained that "because of threats which [he] was receiving from the persons actually responsible for the offences for which [he] stood charged, [he] failed to attend court. [He] ... stayed at home to protect [his] family from known criminals who would have caused harm to [his] family".

The applicant was arrested on 28 July 1995 and remanded in custody. The trial was next scheduled for 4 March 1996. On that date, the applicant's co-accused brother failed to appear and the case was again adjourned.

On 22 April 1996 there was a further pre-trial directions hearing. Three possible trial dates were proposed: 17 June, 12 August and 4 November 1996. However, the applicant's counsel, who had acted for him from the outset and whom the applicant wished to represent him at trial, was not available on 17 June, and it was not possible for the trial to take place on 12 August 1996 because of the unavailability of a number of witnesses. The trial was, therefore, fixed for 4 November 1996. The applicant was remanded in custody until then.

At the trial, both the applicant and his brother pleaded guilty to charges of conspiracy to burgle. The applicant was sentenced to four years' imprisonment.

COMPLAINTS

The applicant complains that he did not receive a trial within a reasonable time, contrary to Article 6 § 1 of the Convention.

PROCEDURE

The application was introduced on 28 February 1997 and registered on 6 September 1997.

On 10 September 1997, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 30 December 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 24 August 1998, also after an extension of the time-limit.

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 LAW

The applicant complained that that he did not receive a trial within a reasonable time, contrary to 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 ... ."

The Government submitted that the case against the applicant had been complicated by the fact that he was a co-defendant with his brother, and that evidence had to be gathered across two legal jurisdictions (England and Scotland). Given the nature of the charges against the two men and the number of witnesses required to prove them, it had been reasonable for the authorities to ensure that they were determined at the same time, and the applicant had not dissented from that objective at any stage. 58 witnesses had been required by the prosecution to prove the charges against the two accused, which meant that three weeks had to be set aside for the trial and the range of dates on which it could have been held was narrowed accordingly.

The Government further submitted that they could not be held responsible for delays caused by the applicant's conduct. His failure to appear at the trial on 3 July 1995 caused a substantial delay while the police sought to apprehend him and whilst the case was re-listed for another three week period. At the hearing on 22 April 1996, he had been given the opportunity to be tried on 17 June, but had elected to wait an additional five months until a date on which his counsel was free. Moreover, the Government contended that they could not be blamed for delays caused by third parties, such as the applicant's co-accused brother who failed to appear for the trial on 4 March 1996. In all the circumstances, they submitted that the application was manifestly ill-founded.

The applicant alleged that his case involved no complex issue of fact or law. He pointed out that it took almost two years from the date on which he was charged for the case initially to be listed, and that, after his arrest on 28 July 1995, a further 15 months elapsed, during which time he was detained on remand. He submitted that, whatever the difficulties involved, court time ought to have been made available to deal with the case expeditiously, and that a delay of three years, four months was totally unacceptable.

The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case, regard being had in particular to its complexity and the conduct of the applicant and the relevant authorities (see the Reinhardt and Slimane-Kaïd v. France judgment of 31 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 662, § 97). Persons held in detention are entitled to special diligence (see the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, p. 35, § 84).

The Court notes that it is not in dispute that the relevant period commenced on 17 June 1993, when the applicant was charged, and ended on 4 November 1996, when he pleaded guilty to the charges against him. During this period, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see the H. v. France judgment of 24 October 1989, Series A no. 162-A, pp. 21-22, § 55).

The Court accepts the applicant's submission that the case against him involved no complex issue of law or fact. Nonetheless, it notes that the prosecution required 58 witnesses to give evidence against the applicant and his co-accused brother. It considers that the number of witnesses involved is a factor to be taken into account when assessing the reasonableness of the length of the proceedings, since it entailed three weeks of court time having to be set aside for the trial, and that a time be found when all the witnesses were able to attend.

The Court does not consider that the initial delay of approximately three months between 17 June 1993, when the applicant was charged, and 21 September 1993, when, the investigation having been completed, the committal papers were served on the defence, was unreasonable, given the need to collect evidence from a number of sources in England and Scotland.

The Court recalls that the applicant's representatives asked the authorities not to list the case for trial before October 1994, to enable them to obtain medical evidence. This may have been an entirely reasonable request on the part of the defence, but it is nonetheless clear that the delay occasioned cannot be attributed to the State authorities (see, for example, the Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 36, § 82). Once the defence was ready to proceed, a period of approximately eight months elapsed before 3 July 1995, the date on which the applicant's trial was due to commence. Given the difficulties referred to above in accommodating a three-week trial, the Court does not consider that the delay in question was excessive. Moreover, it is to be recalled that the applicant was at liberty throughout this period.

The State authorities cannot be held responsible for the failure of the trial to take place on 3 July 1995, when the applicant absconded, nor for the delay until 28 July 1995, when he was arrested and remanded in custody.

The trial was rescheduled for 4 March 1996, when it was again necessary to adjourn the proceedings, because the applicant's co-accused brother did not attend. It would not appear, and indeed the applicant does not allege, that the State authorities should be held responsible for the co-accused's absence or the failure of the trial once again to proceed. However, following this second adjournment, and particularly in view of the fact that the applicant had been in custody since 28 July, the authorities were under a duty to ensure that the charges against the applicant were determined within a reasonable time.

In this respect, the Court notes that at the directions hearing on 22 April 1996, three alternative trial dates were proposed. The applicant rejected the first proposed date, 17 June 1996, because his counsel was not free on that day. Again, the applicant cannot be reproached in respect of this decision, but the Court nonetheless considers that he must be held partly responsible for the resulting increase of four and a half months in the time it took for his case to be heard.

In conclusion, the Court does not consider that those delays in the proceedings attributable to the State authorities were unreasonable, or that the proceedings, taken as a whole, exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S Dollé
Registrar

J-P. Costa
President