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

FOURTH SECTION

CASE OF S.C. v. THE UNITED KINGDOM

(Application no. 60958/00)

JUDGMENT

STRASBOURG

15 June 2004

FINAL

10/11/2004

In the case of S.C. v. the United Kingdom,

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

Mr M. PELLONPÄÄ, *President,*
Sir Nicolas BRATZA,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges,*

and Mr M. O'BOYLE, *Section Registrar,*

Having deliberated in private on 25 May 2004,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 60958/00) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, S.C. ("the applicant"), on 9 July 2000. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Mr A. Todd and Mr H. Gow, lawyers practising in Liverpool. The United Kingdom Government ("the Government") were represented by their Agent, Ms E. Willmott, of the Foreign and Commonwealth Office.

3. The applicant alleged that, because of his youth and low intellectual ability, he had been unable to participate effectively in his trial, contrary to Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 30 September 2003, the Chamber declared the application admissible.

6. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), and the parties submitted written observations on the merits and on the applicant's claims under Article 41 of the Convention (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1988 and lives in Merseyside.

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

9. In June 1999 the applicant, who had just turned 11, and a 14-year-old boy called "L.A.", approached an 87-year-old woman in the street. The applicant attempted to take the woman's bag, causing her to fall to the ground and fracture her left arm. The applicant ran away and L.A. stayed with the victim. The applicant was charged with attempted robbery. His defence was that he had acted under duress, having been threatened by L.A.

10. In July 1999, in connection with other offences, he was given a two-year supervision order and was remanded to the care of the local authority and placed with foster parents.

11. In August 1999 the Youth Court, looking at the applicant's offending history, which included offences of robbery, burglary, theft and arson, considered that it might be appropriate to impose a custodial sentence if he were convicted of the attempted robbery, and committed him for trial in the Crown Court. After committal, the applicant's legal representatives obtained two expert reports. The first report was prepared by Dr Ronan Brennan, an adolescent forensic psychiatrist, who was able to talk to the applicant for twenty minutes in September 1999 before the latter terminated the interview. The applicant was also seen by Diane Baines, a consultant clinical psychologist, on 11 October 1999.

12. In his report Dr Brennan observed, *inter alia*:

> "*Mental state examination*
>
> [The applicant] sat motionless in the chair throughout my brief interview. He appeared distracted and frequently asked me to repeat my questioning claiming that he could not understand me. He appeared defensive when questioned regarding family circumstances and was vague about his past schooling. He appeared reluctant to discuss his offending behaviour, asking me what point was there discussing it with me.
>
> Ultimately, after repeating the statement that he was bored and wanted to eat he informed me that he would not answer any more questions and wanted to leave. Since it was clear that he was resistant to further questioning or probing I consented to his wish.

Impression

It has been extremely difficult to form a detailed impression of this young man's problems and needs by virtue of his unwillingness to enter into the assessment process and a failure to obtain collateral information regarding his personal development and family background.

It is evident from the limited information available that [the applicant] has exhibited a behaviour disturbance from an early age which has resulted in restricted academic progress and alienation from his peers. ... [The applicant's] persistent pattern of disruptive and socially inappropriate behaviour would be consistent with a diagnosis of conduct disorder of the unsocialised type.

It would appear from Diane Baines's psychological report ... that [the applicant] has a significant degree of learning difficulties. He has a full scale IQ of 56 (0.2nd centile), a verbal IQ of 63 (1st centile) and a performance IQ of 55 (0.1st centile). These scores would be consistent with his academic underachievement and could be viewed as a consequence of his disrupted schooling. Diane Baines notes that with [the applicant's] cognitive abilities being more consistent with a child of 8 rather than 11, his 'ability to reason is noticeably restricted'. ...

It is clear that [the applicant] has complex needs which should ideally be addressed under the provisions of a care order for the foreseeable future. ...

It is conceivable that, if a coordinated package of care fails to meet [the applicant's] complex educational and emotional needs, he will potentially pose a high risk of reoffending. At this time however I believe that a long term care order, with a stable foster placement and an appropriate educational package should be considered if an alternative to a custodial sentence were felt viable.

Recommendations

1. It is difficult to assess issues concerning [the applicant's] fitness to plead since his discussion of the offence with me was limited. However, based on the information available to me and the findings of the psychological testing I would conclude that [the applicant] on balance was aware of his actions and that they were wrong. His understanding of their consequences however may have been adversely affected by his learning difficulties and impaired reasoning skills. Overall I would consider that [the applicant] is sufficiently capable of entering a plea though obviously the court process would have to be explained carefully in a manner commensurate with his learning difficulties.

2. [The applicant] should be placed on a Supervision Order for as long as possible with a plan to address his emotional and educational needs and reduce his offending behaviour.

3. Long-term foster care should in my opinion be considered in preference to a custodial sentence if this were deemed possible.

4. A copy of Diane Baines's report should be forwarded, with her consent, to [the applicant's] school in order to devise an appropriate educational package to meet his complex needs."

13. Diane Baines's report, dated 18 October 1999, states as follows:

> "[The applicant] was seen in the company of his Youth Justice Worker in the outpatient department. He was friendly and cooperative with a reasonable attention span in the individual setting. He generally understood what was required of him although some explanations required repetition and he occasionally needed encouragement to persevere. ...
>
> [The applicant] was given the WISC-III [Wechsler Intelligence Scale for Children - 3rd edition), which looks at the development of reasoning skills as applied to both verbal and non verbal problem solving. ... [O]verall, [the applicant] is presenting with a significant degree of learning delay. His Verbal IQ is slightly higher than his Performance IQ, but both fall at or below the first percentile.
>
> On the Verbal Scale, [the applicant] gained a score that was only just outside the average range on Digit Span, indicating reasonably good rote memory skills. Consistent with this was his ability to carry out the mental calculations for Arithmetic. His scores on the remaining subtests were more significantly below average, reflecting poorly developed verbal reasoning skills. He found it particularly difficult to define words for Vocabulary, which he did to the level expected of most children aged about 6 years old.
>
> In general, [the applicant] experienced more difficulty with the Performance Scale subtests than with those that were language based. His age equivalents on this Scale ranged from below 6 years 2 months at the lowest to 6 years 6 months at the highest. His approach to tasks that were reliant on the appreciation of visuo-spatial relationships was noticeably immature and he did not always attend to the relevant features.
>
> [The applicant's] attainments in literacy were looked at using the WORD [Wechsler Objective Reading Dimensions] and it was found that his ability to read and spell individual words out of context were both at levels that would be predicted from his general intelligence. He coped less well than expected with the Reading Comprehension section but this should be interpreted in the context of his disrupted educational career.
>
> *Summary*
>
> [The applicant] is currently presenting with a significant degree of learning difficulty that is most apparent in his ability to carry out visually based tasks. ... If looked at in terms of age equivalents, [the applicant's] cognitive abilities cover a range from below 6 years 2 months up to 8 years 2 months, which will mean that his ability to reason is noticeably restricted. ..."

14. There was a pre-trial hearing in December 1999. The applicant's counsel relied on Articles 3 and 6 of the Convention and argued that the trial should be stayed as an abuse of process because of the applicant's low attention span and educational age, which meant that he would be unable fully to understand and participate in the trial. This submission was rejected by the judge, who ruled, *inter alia*:

"I do not accept that placing [the applicant] on trial in the Crown Court amounts to inhuman or degrading treatment or will be unfair. Following the procedures now habitually adopted in Crown Courts when trying children, the trial before the jury will be conducted in as informal a manner as is consistent with the requirements of a fair trial. Legal wigs and robes will not be worn. The issue before the jury will be a simple one. There is no reason to think that [the applicant] will be any less able to give his evidence to the jury than to the Youth Court. On the material before me he appears to be a 'streetwise' child, whose intellectual impairment is largely the result of spending two of his critical formative years outside the education system.

I questioned whether there is felt to be a public interest in proceeding with the prosecution, having regard to the fact that [the applicant] is already subject to a two-year supervision order for offences including robberies. I was told that since that order was made on 1 July 1999 (at which time [the applicant] was also taken into local authority care), he has committed (and admitted) a number of other offences. He was placed with foster parents, who in September felt (according to Dr Brennan's report) that he was making some progress. Now, they are unwilling to keep him, finding him uncontrollable. In these circumstances it is entirely understandable that the Crown wish to proceed with the prosecution.

Mr Gow also wished to take the point at trial that [the applicant] is unfit to plead. This argument is not supported by Dr Brennan's written report, but I was told that in a subsequent conference with counsel Dr Brennan was equivocal on this point and his oral evidence might support it, although he has not seen [the applicant] since September (when the boy was uncooperative anyway). No supplementary written report has been served. Mr Gow has overlooked the fact that the evidence of two medical practitioners would be needed before a jury could be invited to find his client unfit to plead; also that Mrs Baines is not a medical practitioner. He asked me to vacate [the] trial date to give the defence time to engage a second doctor.

I refused this application also, inviting Mr Gow to reflect on whether this point can really be pursued in the light of Dr Brennan's conclusions. If the boy is unfit to plead, then he would presumably have been unfit to plead in the Youth Court, yet the point has apparently never been suggested on his various appearances there. Since this afternoon's hearing I understand from Mr Gow that he has duly reflected and discussed the matter with his instructing solicitors, and does not now intend to pursue the issue of fitness to plead. The trial will therefore proceed on the merits, the issue being duress. ..."

15. At the hearing in December 1999, which lasted one day, the applicant was accompanied by his social worker. He was not required to sit in the dock and the court took frequent breaks and dispensed with the formality of wearing wigs and gowns. The Crown case consisted of two written statements (by the victim of the alleged crime and the arresting police officer) and the oral testimony of two eyewitnesses. The applicant gave evidence that he had committed the offence under duress, and Diane Baines also gave evidence consistent with her report.

16. The applicant was convicted and sentenced to two and a half years' detention.

17. He appealed to the Court of Appeal, *inter alia*, on the grounds that he had been deprived of a fair trial in view of his age and impaired

intellectual capacity. The applicant advanced new evidence before the Court of Appeal, including a statement by the applicant's supervising social worker, who had been with him in the Crown Court, and who said, *inter alia*:

> "To address [the applicant's] first appearance [in the] Crown Court, the court was attired in full regalia and [the applicant] was totally perplexed at the rigid formality and surroundings of the Crown Court, and it is my opinion that he did not fully understand the situation.
>
> ... [A]t his trial I was pleased to see that the Court was dressed in mufti. Whilst the jury was being sworn in [the applicant] asked me who they all were. I explained in as simple language [sic] a boy of 11 years should understand, that they were members of the public who would have the duty of finding [the applicant] not guilty or guilty.
>
> He then said if they were the public why could not his mother sit there to help him. [The applicant] did not have a member of his family in attendance despite efforts made by myself.
>
> Whilst the trial was taking place [the applicant] kept turning around to talk to myself asking what was happening. [The applicant] has an extremely short attention span and it is my opinion that his lack of understanding of the formalities of the Crown Court led to the jury observing what could have been misinterpreted as bad behaviour and a 'could not care less' attitude.
>
> I believe this also antagonised some jury members when [sic] I observed watching [the applicant] closely. Even when the sentence was passed [the applicant] again did not understand what had been passed or where he was being placed.
>
> [The applicant] was under the impression that he would be returning to his foster/remand placement with [his foster father], who was present at Crown Court. Despite my efforts to explain the situation to him [the applicant] did not comprehend the situation he was in. When he was taken to the holding cells awaiting escorts I took time to try again to explain the consequences of his trial and sentence but he was still confused."

18. On 19 June 2000 the applicant's appeal was dismissed by the Court of Appeal, which refused leave to argue the abuse of process/unfair trial ground, holding that it was clear that the first-instance judge, in exercising his discretion to allow the trial to proceed, had taken account of the applicant's age, level of maturity and intellectual and emotional capacities, and that steps had been taken to promote the applicant's ability to understand and participate in the proceedings. The Court of Appeal also rejected the application for leave to appeal against the sentence imposed. It noted, from a comprehensive report prepared by the unit where the applicant was detained, that there had been great improvements in both the applicant's behaviour and his work and considered that, given the long period of instability in the applicant's life, a settled period of support and education of the kind he was now receiving must be in his best interests.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Age of criminal responsibility

19. Under section 50 of the Children and Young Persons Act 1933 as amended by section 16(1) of the Children and Young Persons Act 1963 ("the 1933 Act"), the age of criminal responsibility in England and Wales is 10 years, below which no child can be found guilty of a criminal offence.

B. Procedures for child defendants

20. Pursuant to section 24 of the Magistrates' Courts Act 1980, children and young persons under 18 must be tried summarily in the Magistrates' Court, where the trial usually takes place in the specialist Youth Court, which has an informal procedure and from which the general public are excluded. The exceptions are children and young persons charged with murder, manslaughter or an offence punishable if committed by an adult with fourteen or more years' imprisonment, who are tried in the Crown Court before a judge and jury.

21. Under section 44 of the 1933 Act, every court dealing with a child (under 14) or young person (under 18), whether as an offender or otherwise, must have regard to his or her welfare.

22. On 16 February 2000, following the Court's judgments in *T. v. the United Kingdom* ([GC], no. 24724/94, 16 December 1999) and *V. v. the United Kingdom* ([GC], no. 24888/94, ECHR 1999-IX), the Lord Chief Justice issued a practice direction concerning the trial of children and young persons in the Crown Court. This practice direction, which was not, however, in force at the time of the applicant's trial, states as follows:

> "1. This practice direction applies to trials of children and young persons in the Crown Court. Effect should be given to it forthwith. In it children and young persons are together called 'young defendants'. The singular includes the plural and the masculine includes the feminine.
>
> 2. The steps which should be taken to comply with this practice direction should be judged, in any given case, taking account of the age, maturity and development (intellectual and emotional) of the young defendant on trial and all other circumstances of the case.
>
> *The overriding principle*
>
> 3. Some young defendants accused of committing serious crimes may be very young and very immature when standing trial in the Crown Court. The purpose of such trial is to determine guilt (if that is an issue) and decide the appropriate sentence if the young defendant pleads guilty or is convicted. The trial process should not itself expose the young defendant to avoidable intimidation, humiliation or distress. All

possible steps should be taken to assist the young defendant to understand and participate in the proceedings. The ordinary trial process should so far as necessary be adapted to meet those ends. Regard should be had to the welfare of the young defendant as required by section 44 of the Children and Young Persons Act 1933.

Before trial

4. If a young defendant is indicted jointly with an adult defendant, the court should consider at the plea and directions hearing whether the young defendant should be tried on his own and should ordinarily so order unless of the opinion that a joint trial would be in the interests of justice and would not be unduly prejudicial to the welfare of the young defendant. If a young defendant is tried jointly with an adult the ordinary procedures will apply subject to such modifications (if any) as the court may see fit to order.

5. At the plea and directions hearing before trial of a young defendant, the court should consider and so far as practicable give directions on the matters covered in paragraphs 9 to 15 below inclusive.

6. It may be appropriate to arrange that a young defendant should visit, out of court hours and before trial, the courtroom in which the trial is to be held so that he can familiarise himself with it.

7. If any case against a young defendant has attracted or may attract widespread public or media interest, the assistance of the police should be enlisted to try to ensure that a young defendant is not, when attending for the trial, exposed to intimidation, vilification or abuse.

8. The court should be ready at this stage (if it has not already done so) to give a direction under section 39 of the Children and Young Persons Act 1933 or, as the case may be, section 45 of the Youth Justice and Criminal Evidence Act 1999. Any such order, once made, should be reduced to writing and copies should on request be made available to anyone affected or potentially affected by it.

The trial

9. The trial should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.

10. A young defendant should normally, if he wishes, be free to sit with members of his family or others in a like relationship and in a place which permits easy, informal communication with his legal representatives and others with whom he wants or needs communication.

11. The court should explain the course of proceedings to a young defendant in terms he can understand, should remind those representing a young defendant of their continuing duty to explain each step of the trial to him and should ensure, so far as practicable, that the trial is conducted in language which the young defendant can understand.

12. The trial should be conducted according to a timetable which takes full account of a young defendant's inability to concentrate for long periods. Frequent and regular breaks will often be appropriate.

13. Robes and wigs should not be worn unless the young defendant asks that they should or the court for good reason orders that they should. Any person responsible for the security of a young defendant who is in custody should not be in uniform. There should be no recognisable police presence in the courtroom save for good reason.

14. The court should be prepared to restrict attendance at the trial to a small number, perhaps limited to some of those with an immediate and direct interest in the outcome of the trial. The court should rule on any challenged claim to attend.

15. Facilities for reporting the trial (subject to any direction given under section 39 of the Act of 1933 or section 45 of the Act of 1999) must be provided. But the court may restrict the number of those attending in the courtroom to report the trial to such a number as is judged practicable and desirable. In ruling on any challenged claim to attend the courtroom for the purpose of reporting the trial the court should be mindful of the public's general right to be informed about the administration of justice in the Crown Court. Where access to the courtroom by reporters is restricted, arrangements should be made for the proceedings to be relayed, audibly and, if possible, visually, to another room in the same court complex to which the media have free access if it appears that there will be a need for such additional facilities.

16. Where the court is called upon to exercise its discretion in relation to any procedural matter falling within the scope of this practice direction but not the subject of any specific reference, such discretion should be exercised having regard to the principles in paragraph 3 above.

Appeal and committals for sentence

17. This practice direction does not in terms apply to appeals and committals for sentence, but regard should be paid to the effect of it if the arrangements for hearing any appeal or committal might otherwise be prejudicial to the welfare of a young defendant."

C. Fitness to plead

23. An accused is "unfit to plead" if by reason of a disability, such as mental illness, he has "insufficient intellect to instruct his solicitors and counsel, to plead to the indictment, to challenge jurors, to understand the evidence, and to give evidence" (*R. v. Robertson* 52 Criminal Appeal Reports 690). The question whether or not a defendant is fit to plead must be decided by a jury upon the written or oral evidence of at least two medical experts. Where a jury has found the defendant unfit to plead, either the same or another jury may be required to proceed with the trial and decide whether the accused did the act or made the omission charged against him as the offence, in which case the court may make a hospital

order against him (Criminal Procedure (Insanity) Act 1964, sections 4, 4A and 5). Alternatively, the trial may be postponed indefinitely until the accused is fit to plead.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained of a breach of Article 6 § 1 of the Convention, which states:

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

25. The Government submitted that there had been no violation in this case. They accepted that an accused had the right to participate effectively in his criminal trial, but disputed that, in the case of a child, this entailed that he should be able to understand every point of law or evidential detail. Although the practice direction concerning child defendants was not in force at the time of the applicant's trial, the procedure adopted in his case complied with it: the applicant was accompanied at all times by his supervising social worker, the formality of wigs and gowns was abandoned and the court took frequent breaks. His case had involved no publicity and was not the object of public anger. There was no evidence that the applicant was traumatised by the trial or that, at the time of the hearing, his psychological condition prevented him from understanding the nature of the wrongdoing of which he was accused or from instructing and consulting with his legal representatives. No mention was made at trial of any difficulties said to have been encountered by the applicant. Moreover, the applicant and his supervising social worker conferred frequently in order for the latter to explain what was happening. It had not been suggested that the applicant did not understand those explanations or that he was unable to apply himself to the events around him to the extent that he could not effectively participate in the proceedings or, indeed, give evidence in his own defence.

26. It was contended on behalf of the applicant that he came from an appalling family background and was intellectually impaired as a result. An 11-year-old child such as the applicant, with the mental age of, at best, an 8-year-old, and at worst a 6-year-old, who was so intellectually backward as to fall within the lowest 1% of children in his age-group, should not have been tried by a judge and jury, in a court open to the public to which the press was given free access. Instead, the applicant should have been tried in the privacy of a specialist Youth Court with proper sentencing powers. It

was clear to any trained observer, including the applicant's social worker, that the applicant was unable fully to comprehend or participate in the trial process and could not adequately give instructions. He was overawed by the jury and the formalities of the Crown Court, despite the adapted procedure, and his short attention span antagonised the jury.

27. The Court observes, firstly, that the attribution of criminal responsibility to, or the trial on criminal charges of, an 11-year-old child does not in itself give rise to a breach of the Convention, as long as he or she is able to participate effectively in the trial (see *T. v. the United Kingdom* [GC], no. 24724/94, §§ 72 and 84, 16 December 1999, and *V. v. the United Kingdom* [GC], no. 24888/94, ECHR 1999-IX).

28. The right of an accused to effective participation in his or her criminal trial generally includes, *inter alia*, not only the right to be present, but also to hear and follow the proceedings (see *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, pp. 10-11, § 26). In the case of a child, it is essential that he be dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (see *T. v. the United Kingdom*, cited above, § 84), including conducting the hearing in such a way as to reduce as far as possible his feelings of intimidation and inhibition (ibid., § 85).

29. The Court accepts the Government's argument that Article 6 § 1 does not require that a child on trial for a criminal offence should understand or be capable of understanding every point of law or evidential detail. Given the sophistication of modern legal systems, many adults of normal intelligence are unable fully to comprehend all the intricacies and all the exchanges which take place in the courtroom: this is why the Convention, in Article 6 § 3 (c), emphasises the importance of the right to legal representation. However, "effective participation" in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence (see, for example, *Stanford*, cited above, § 30).

30. In the present case, the Court notes that, although the applicant was tried in public, in the Crown Court, steps were taken to ensure that the procedure was as informal as possible; for example, the legal professionals did not wear wigs and gowns and the applicant was allowed to sit next to his

social worker. In contrast to the situation in *T.* and *V. v. the United Kingdom*, cited above, the applicant's arrest and trial were not the subject of high levels of public and media interest and animosity and there is no evidence that the atmosphere in the courtroom was particularly tense or intimidating.

31. The Recorder, who considered at first instance whether the applicant's trial would be an abuse of process and/or contrary to the Convention, ruled that it would not and observed that the applicant appeared to be "a 'streetwise' child, whose intellectual impairment is largely the result of spending two of his critical formative years outside the education system". The Court of Appeal refused leave to appeal on the Article 6/abuse of process ground, holding that the Recorder had had the principles set out by the European Court in *T.* and *V.* in mind when exercising his discretion to allow the trial to proceed.

32. The Court considers it noteworthy, however, that the two experts who assessed the applicant before the hearing formed the view that he had a very low intellectual level for his age (see paragraphs 12 and 13 above). Diane Baines found in her report that the applicant's performance in various tests showed "a significant degree of learning difficulty" and that his ability to reason was "noticeably restricted", equivalent to that of an average child aged between 6 and 8, depending on the precise nature of the cognitive skill being tested. Dr Brennan, while concluding that the applicant had probably been aware of his actions and that they were wrong, commented that "[h]is understanding of their consequences however may have been adversely affected by his learning difficulties and impaired reasoning skills" and recommended that the court process should be explained carefully in a manner commensurate with the applicant's learning difficulties.

33. While this appears to have been done, at least by the social worker who was with the applicant in the Crown Court, the former recounts in his statement that "[d]espite my efforts to explain the situation to him [the applicant] did not comprehend the situation he was in" (see paragraph 17 above). Thus, the applicant seems to have had little comprehension of the role of the jury in the proceedings or of the importance of making a good impression on them. Even more strikingly, he does not seem to have grasped the fact that he risked a custodial sentence and, even once sentence had been passed and he had been taken down to the holding cells, he appeared confused and expected to be able to go home with his foster father.

34. In the light of this evidence, the Court cannot conclude that the applicant was capable of participating effectively in his trial, in the sense set out in paragraph 29 above.

35. The Court considers that, when the decision is taken to deal with a child, such as the applicant, who risks not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings rather than some other form of disposal

directed primarily at determining the child's best interests and those of the community, it is essential that he be tried in a specialist tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly.

36. It is true that it was not contended on behalf of the applicant during the domestic proceedings that he was unfit to plead. However, the Court observes that in *T.* and *V. v. the United Kingdom*, cited above, it rejected the Government's preliminary objections that the applications should be declared inadmissible for non-exhaustion of domestic remedies because of the failure to claim at trial that the applicants were unfit to plead (§§ 52-59 and §§ 54-61 respectively). The Court observed in those judgments that in order to obtain a stay of proceedings on this ground it was necessary to persuade the jury, on the basis of firm medical evidence, that the accused was so intellectually impaired that he was unable even to understand whether or not he was guilty. As noted above, Dr Brennan found that, "on balance", the applicant probably did have sufficient intelligence to understand that what he had done was wrong, and that he was therefore fit to plead. The Court is not, however, convinced, in the circumstances of the present case, that it follows that the applicant was capable of participating effectively in his trial to the extent required by Article 6 § 1 of the Convention.

37. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

39. The applicant claimed a total of 25,000 pounds sterling (GBP)[1] in respect of non-pecuniary damage for wrongful conviction (GBP 10,000) and wrongful imprisonment for eighteen months (GBP 15,000).

40. The Government submitted that no causal connection could be established between the alleged violation and the conviction and imprisonment, and that the Court should follow its usual practice of refusing to speculate about the outcome of the proceedings had Article 6 § 1 not been violated. Furthermore, there was no evidence that the applicant had been in

1. Approximately 36,800 euros.

any way traumatised by his trial. If the Court were to find a violation in this case, that finding would constitute sufficient just satisfaction.

41. The Court notes that it has found a violation of Article 6 § 1 on the basis that the applicant was unable to participate effectively in his trial. It does not, however, follow that had the applicant not been subjected to an unfair trial he would not have been convicted or placed in detention for eighteen months.

42. There is, therefore, no ground on which to award the applicant compensation in respect of his conviction and detention. The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant (see, amongst many other examples, *Saunders v. the United Kingdom*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2069, §§ 87-89).

B. Costs and expenses

1. Domestic legal costs

43. It was submitted on behalf of the applicant that he had incurred legal costs of GBP 3,480 before the domestic courts. These included twenty-eight hours and thirty minutes' work by counsel and four hours and thirty minutes' work by the solicitor, which were not covered by domestic legal aid.

44. The Government submitted that the domestic costs would already have been covered by legal aid.

45. The Court reiterates the established principle in relation to domestic legal costs, namely, that an applicant is entitled to be reimbursed those costs actually and necessarily incurred to prevent or redress the breach of the Convention, to the extent that the costs are reasonable as to quantum (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 49, ECHR 2002-IV).

46. In the present case the Court notes that a substantial part of the domestic proceedings, including a pre-trial hearing in December 1999 and the appeal against conviction, was occupied with the issue whether it was consistent with the applicant's rights under the Convention to try him in the Crown Court. However, it appears that the applicant was awarded legal aid to cover representation at the above hearings, together with a reasonable amount of preparatory work. The Court is not persuaded that the additional costs were necessarily incurred to prevent or redress the breach of the Convention, and it does not therefore make any award under this head.

2. Strasbourg legal costs

47. In addition, the applicant sought the costs of the application to the Court, amounting to GBP 7,520, including fifteen hours and thirty minutes' work by the solicitor and fifty-three hours and thirty minutes' work by counsel.

48. The Government accepted that an award should be made, to the extent that the applicant's costs had not already been reimbursed by the legal-aid scheme, but had serious concerns about the amount of time allegedly spent on the application.

49. The Court, taking into account that the present application was not unduly complex, that no hearing took place and that it was not necessary to submit or consider very lengthy written pleadings, awards 6,000 euros (EUR), less the EUR 685 already paid in legal aid, but together with any value-added tax that may be payable.

C. Default interest

50. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by five votes to two that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
3. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,315 (five thousand three hundred and fifteen euros) in respect of costs and expenses, to be converted into pounds sterling at the rate applicable on the date of settlement, together with any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Mrs Strážnická and Mr Casadevall;

(b) dissenting opinion of Mr Pellonpää joined by Sir Nicolas Bratza.

M.P.
M.O'B.

PARTLY DISSENTING OPINION OF JUDGES STRÁŽNICKÁ AND CASADEVALL

We voted with the majority for a violation of Article 6 § 1 in this case. However, we consider that in the light of this finding an award in respect of non-pecuniary damage should have been made.

DISSENTING OPINION OF JUDGE PELLONPÄÄ JOINED BY JUDGE Sir Nicolas BRATZA

I have voted against the finding of a violation in the present case.

I admit that subjecting an 11-year-old boy with an even lower mental age to trial by an ordinary criminal court may, at first sight, appear striking. However, following the judgments delivered by the Court in 1999 in *T. v. the United Kingdom* ([GC], no. 24724/94, 16 December 1999) and *V. v. the United Kingdom* ([GC]), no. 24888/94, ECHR 1999-IX), it is clear that neither the attribution of criminal responsibility to, nor the trial on criminal charges of, a child of that age gives rise in itself to a breach of the Convention, as long as he or she is able to participate effectively in the trial. I agree with the way in which the broad principles concerning such effective participation have been set out in the present judgment (see paragraphs 27-28).

These principles require that the child be dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (see *V. v. the United Kingdom*, § 86), including conducting the hearing in such a way as to reduce as far as possible his feelings of intimidation and inhibition (ibid., § 87).

As noted by the Court (see paragraph 30 of the judgment), steps were indeed taken to ensure that the procedure before the Crown Court was as informal as possible. In this respect the considerations and criticism put forward by the Court in *T.* and *V.* had evidently served as a source of guidance. Thus, in the present case, unlike the two earlier cases, the legal professionals did not wear wigs and gowns and the applicant was allowed to sit next to his social worker. He was not required to sit in the dock (see paragraph 15 of the judgment) during his one-day trial, in contrast to the situation in *T.* and *V.*, where the accused were placed in a specially raised dock for the whole three-week trial (see *V. v. the United Kingdom*, § 88). Also in contrast to the above-mentioned cases, the applicant's arrest and trial were not the subject of high levels of public and media interest and hostility and there is no evidence that the atmosphere in the courtroom was particularly tense or intimidating. Nor is there any suggestion that the trial would have caused the applicant post-traumatic effects comparable to those in *T.* and *V.* (see *V. v. the United Kingdom*, § 89). Indeed, in the circumstances of the present case it is not at all obvious that the choice of the Youth Court would have made the proceedings decisively different from the applicant's point of view.

All in all, had the applicant's actual age been the only issue, the proceedings in my view clearly could not disclose any appearance of a violation of Article 6, when interpreted in the light of *T.* and *V.* It remains to

be seen whether considerations relating to the applicant's stage of mental development should lead to a different conclusion.

I accept that the mere removal of wigs and gowns and like measures would not necessarily suffice in the case of a child who, because of his mental condition, may not be able to understand the proceedings. Therefore, where there is prima facie evidence of such an inability, certain extra precautions by national authorities are called for. If, however, the child's ability to stand trial has been properly examined by the national authorities, who have the benefit of direct contact with all the persons concerned, the conclusions drawn in that process should not lightly be overridden by this Court.

Having these considerations in mind, I recall that the initiative to subject the applicant to a trial before the Crown Court was taken by the Youth Court, before which he had appeared several times (see paragraph 11 of the judgment). Before the trial the applicant's legal representatives obtained two expert opinions concerning his learning difficulties and related matters. However, there was no medical evidence that the applicant was unfit to plead – that is, that he had "insufficient intellect to instruct his solicitors and counsel, to plead to the indictment, to challenge jurors, to understand the evidence, and to give evidence" (paragraph 23) – and no plea to that effect was in the event put forward on his behalf during the proceedings.

Only one of the two experts consulted was a doctor, whereas the evidence of two medical practitioners would have been needed under domestic law before a jury could have been invited to find the accused unfit to plead. Moreover, the only medical practitioner consulted, Dr Brennan, considered that the applicant was "sufficiently capable of entering a plea though obviously the court process would have to be explained carefully in a manner commensurate with his learning difficulties" (see paragraph 12). It is true that Dr Brennan reached his conclusion concerning the applicant's awareness of his actions and their wrongfulness only "on balance", as emphasised by the majority (see paragraph 36). Even so, in reaching that conclusion Dr Brennan had the benefit, not enjoyed by our Court, of having personally seen and talked to the applicant. As the conclusion of Dr Brennan does not disclose any sign of arbitrariness or prejudice, I cannot see how we could set it aside.

Moreover, before the trial, there was a pre-trial hearing at which it was argued on the applicant's behalf that the trial should be stayed as an abuse of process. The first-instance judge conducting the pre-trial hearing held that there was no reason to think that the applicant was "any less able to give his evidence to the jury than to the Youth Court", adding that the applicant appeared to be a " 'streetwise' child, whose intellectual impairment is largely the result of spending two of his critical formative years outside the education system" (see paragraph 14). Again, I do not find any reason to

doubt the well-foundedness of this conclusion drawn by the judge on the basis of personal contact with the applicant.

Nor did the Court of Appeal find reason for criticism in this respect. It refused leave to appeal, holding that it was clear that the first-instance judge, in exercising his discretion to allow the trial to proceed, had taken account of the applicant's age, level of maturity and other relevant circumstances. The court also noted, on the basis of a report by the unit where the applicant was detained, that there now appeared to be great improvements in the applicant's behaviour and work (see paragraph 18).

The Court of Appeal had available, among other materials, the statement (partly reproduced in paragraph 17 of the judgment) of the social worker who had been with the applicant at the trial. The majority of our Court place much emphasis on that report concluding, *inter alia*, that "the applicant seems to have had little comprehension of the role of the jury in the proceedings or of the importance of making a good impression on them" (see paragraph 33). In so far as this may reflect an acceptance of the social worker's belief that some jury members had been antagonised by the applicant and thus somehow may have lost their subjective impartiality, I recall the well-established case-law according to which subjective impartiality is to be presumed until there is proof to the contrary (see, for example, *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 14, § 25). In my view the social worker's report is far from sufficient to cast doubt on the jury's ability to decide the case properly and without being unduly influenced by the applicant's restless behaviour during the trial, as recounted in the social worker's statement.

In conclusion, precautions were taken before and during the trial to accommodate the proceedings to the specific needs arising from the applicant's young age and the stage of his mental development. During the trial, the applicant's representatives seem to have believed that he was capable of defending himself and explaining his own version of events, because, in contrast to the situation in *T.* and *V.*, he was called to give evidence. There is no solid basis for suggesting that the jury would have been affected by what may have been a lack of understanding on the applicant's part of the importance of making a good impression on them. In these circumstances I cannot agree with the majority's conclusion that Article 6 has been violated.

I have, however, accepted that conclusion as a point of departure for my votes concerning the application of Article 41. Even accepting, for that purpose, that there has been a violation, I consider that the finding of a violation constitutes sufficient satisfaction for any non-pecuniary damage. I also voted with the majority as regards the award of legal costs and expenses. Since the majority have found a violation, I consider it proper that the applicant should be compensated for his legal expenses.