



13 June 2013

## PRESS SUMMARY

**O'Neill No 2 (Appellant) v Her Majesty's Advocate (Respondent) (Scotland)**  
**Lauchlan (Appellant) v Her Majesty's Advocate (Respondent) (Scotland)**  
**[2013] UKSC 36**

*On appeal from:* [2012] HCJAC 51; [2012] HCJAC 20

**JUSTICES:** Lord Hope (Deputy President), Lord Kerr, Lord Wilson, Lord Hughes and Lord Toulson

### BACKGROUND TO THE APPEALS

The issues in these appeals relate to the right to a fair trial.

Alison McGarrigle had a son, Robert, by her former husband. Robert was subject to a residential supervision order requiring him to live with his father during the week but permitted him to visit his mother on Saturdays. On 14 June 1997 Robert did not return to his father's address and instead he and his mother went to live with the appellants in a house in Largs. A drinking session took place there on or about the 20 June 1997 at which a number of people including the appellants, Robert and Mrs McGarrigle were present. The next morning she was gone and was never seen by Robert again. She was reported to police as missing on 16 February 1998. The investigation continued but in the meantime, on 17 June 1998, the appellants were convicted of sexual offences including offences against Robert McGarrigle and were sentenced to 6 and 8 years imprisonment respectively.

Whilst serving their sentences the appellants were taken by police for questioning on suspicion of conspiracy to murder Alison McGarrigle. They were asked by the officers whether they were involved in her murder, but they both remained silent. Owing to a lack of evidence at that time, proceedings were not commenced against the pair. The appellants were eventually charged in 2005 for the murder of Mrs McGarrigle and remanded in custody.

On 10 June 2010 the appellants were found guilty in the High Court of Justiciary at Glasgow of the murder of Mrs Allison McGarrigle between 21 June and 1 September 1997 and of a subsequent attempt to defeat the ends of justice by disposing of her body in the sea. In a separate trial held immediately before, the appellants were found guilty of a series of sexual offences relating to children. Both trials took place in front of the same judge, Lord Pentland, but with different juries. After the verdict in the first trial the Advocate Depute moved for sentence and handed the judge a list of the appellants' previous convictions. The judge reserved sentencing for the sexual offences until after the trial for murder was complete. At the time of informing the appellants of this, the judge referred to their records and made comments to them that they were *'evil, determined, manipulative and predatory paedophiles of the worst sort'*.

The two issues for the Supreme Court were: (1) when the appellants were 'charged' for the purposes of their right to a trial within a reasonable time in terms of article 6(1) of the Convention (the appellants argued that time started to run when they were first questioned in 1998 and therefore there had been a breach of their right); and (2) whether the comments and conduct of the trial judge were such as to breach the appellants' right to a fair trial by an impartial tribunal in terms of article 6(1) of the Convention and, if so, whether the act of the Lord Advocate in persevering with the trial was

incompatible with the appellants' rights under article 6(1). Both issues arose from the refusal of the Appeal Court to grant leave for the relevant grounds of appeal to be argued in the appeal in Scotland. The Appeal Court did however grant permission to appeal its refusal to the Supreme Court. The Supreme Court held that it had jurisdiction to consider the issues on the basis that they were compatibility issues in terms of the Criminal Procedure (Scotland) Act 1995 (as amended by the Scotland Act 2012), issue (1) being an appeal against a decision of the Appeal Court and issue (2) being a reference from the Appeal Court.

## **JUDGMENT**

The court determines the two compatibility issues as follows: (1) that the date when the reasonable time began for the purposes of the appellants' article 6(1) Convention right was 5 April 2005; and (2) that the Lord Advocate's act in proceeding with the trial on the murder charges was not incompatible with the appellants' article 6(1) right to a trial before a tribunal that was independent and impartial. The proceedings will be remitted to the High Court of Justiciary [58]. Lord Hope gives the judgment of the court.

## **REASONS FOR THE JUDGMENT**

*References in square brackets are to paragraphs in the judgment*

The meaning of the word 'charged' has been considered in a number of cases regarding article 6(1), which provides that in the determination of any "criminal charge against him" a person has the right to a fair trial within a reasonable time and article 6(3)(c) which provides a right to legal assistance for anyone "charged with a criminal offence" [25-32]. The focus of article 6(3)(c) is on the state of affairs when the suspect is first interrogated, as to wait until the stage is reached when there is sufficient evidence to charge before the suspect has the right of access to a lawyer could seriously prejudice his right to a fair trial. This is in contrast with the reasonable time guarantee of article 6(1): it relates to the running of time, not on what is needed to preserve the right to a fair trial. The rationale is the person should not remain too long in a state of uncertainty. Time runs from the date which the suspect's position is substantially affected by the official notification. In the United Kingdom this could be some time after he is first questioned [33-34].

The date from which reasonable time begins is the subject of a separate guarantee from the guarantee that the trial will be fair and falls to be approached independently [36]. The appellants were certainly not at any stage of their interviews "charged" in the formal sense. They were both asked directly whether they killed Mrs McGarrigle. But, in the context in which these questions were being put, it cannot be said that this amounted to an official notification that they were likely to be prosecuted [37]. In the absence of any evidence to show where, when and how she had died, the police were in no position to initiate criminal proceedings. In August 2003 they received information that led to further enquiries and resulted in the appellants being charged with murder in 2005 [38].

On the issue of apparent bias, the test is contained in *Porter v Magill* [2001] UKHL 67 and considered in a number of authorities [47-52]. It would only be if the judge expressed outspoken opinions about the appellants' character that were entirely gratuitous, and only if the occasion for making them was plainly outside the scope of the proper performance of his duties, that the fair minded and informed observer would doubt the judge's ability to perform those duties with an objective judicial mind. The context indicates that nothing of the kind happened in this instance [53-54]. Furthermore, no objection was made by the defence at any point to the fact that Lord Pentland was to preside over the murder trial as well and there are no grounds for doubting his impartiality [55-56].

## **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)