

The Jamie Bulger killing: European Court rules that two 11-year-olds tried as adults did not receive fair trial

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The European Court of Human Rights ruled yesterday that the 1993 trial of two 11-year-old boys for the killing of a toddler was unfair. The Court further ruled that the fixing of their sentences by the Home Secretary was a breach of their human rights.

Robert Thompson and Jon Venables, now 17, were tried for the murder of two-year-old Jamie Bulger in the intimidating setting of a British Crown Court. In a specially built dock, raised to allow them to see the proceedings against them, the two boys sat in full view of the press and a hostile public gallery. Denounced as “evil” by media columnists and politicians alike, the boys were sentenced to be held “at Her Majesty's pleasure” for a period of not less than eight years. Lord Chief Justice Lord Taylor later raised the minimum tariff to 10 years, and Home Secretary Michael Howard raised it again to 15 years.

The two boys' legal representatives brought the case before the European Court following a successful application to the European Commission of Human Rights in 1994. The December 16 Strasbourg court hearing upheld the view that, while the treatment of the boys had not been “inhuman or degrading”, the setting of the tariff by the Home Secretary had violated the right for sentencing to be determined by a court, independent of the Executive. They also agreed that the proceedings violated the right to a fair trial, provided for under the Convention on Human Rights. The judges awarded costs and expenses of £15,000 to Thompson and £29,000 to Venables, though their lawyers had not sought any financial compensation.

Although the court cannot overturn the boys' convictions or order their release, the judgement could have serious implications for the British juvenile law system. The Labour government could be forced to

change practices deemed in breach of the European Convention on Human Rights. This would mean changing the right of the Home Secretary to set minimum terms for minors, and the ability to try juveniles for offences such as rape and murder in an adult court.

In 1997 the British Law Lords ruled that Howard had acted illegally when he raised the tariff to 15 years. The present Home Secretary Jack Straw was due to rule on a new tariff, but held off a decision until yesterday's court outcome was known. Following acceptance of the case by the European Commission, Straw said that Labour would not change any aspect of the law relating to juvenile trials for serious crimes.

The Strasbourg court stopped short of condemning the trial of the two boys on the basis that their age meant that they could not comprehend “criminal responsibility”. The judges ruled that “the age of ten could not be said to be so young as to differ disproportionately to the age limit followed by other European States”.

The judges also rejected the plea by the boys' lawyers that the three-week-long public trial “in an adult Crown Court with attendant formality” subjected the boys to degrading treatment in breach of Article 3 of the Human Rights Convention.

A press release issued by the Court Registrar states: “although there was psychiatric evidence that such proceedings could be expected to have a harmful effect on eleven-year-old children, any inquiry into the killing of the two-year-old, whether it had been carried out in public or in private, attended by the formality of the Crown Court or informally in the Youth Court, would have provoked in the applicants feelings of guilt, distress, anguish and fear. Whilst the public nature of the proceedings may have exacerbated these feelings to a certain extent, the Court was not convinced that the

particular features of the trial process caused, to a significant degree, suffering going beyond that which would inevitably have been engendered by any attempt by the authorities to deal with the applicants.”

The language used in the Court's criticism of their trial is unambiguous. While acknowledging that special measures were taken in view of the ages of the applicants, such as explaining the trial proceedings and the shortening of hearing times to avoid excessive tiredness, the press release says: “Nonetheless, the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven, and there is evidence that certain of the modifications in the court room, in particular the raised dock which was designed to enable the applicants to see what was going on, had the effect of increasing their sense of discomfort during the trial since they felt exposed to the scrutiny of the press and public. There was psychiatric evidence that, at the time of the trial, both applicants were suffering from post-traumatic stress disorder as a result of what they had done to the two-year-old, and that they found it impossible to discuss with their lawyers. They had found the trial distressing and frightening and had not been able to concentrate during it.”

The Court ruled that the presence of skilled lawyers was not enough in such circumstances to secure a fair trial. The Judges concluded that: “Although their legal representatives were seated, as the Government put it, ‘within whispering distance’, it was highly unlikely that either applicant would have felt sufficiently uninhibited in the tense courtroom and under public scrutiny to have consulted with them during the trial or indeed that, given their immaturity and disturbed emotional state, they would have been capable outside the courtroom of co-operating with their lawyers and giving them information for the purpose of their defence.”

The decision of the European Court will prove embarrassing for the Blair government, for whom the Bulger trial became an occasion for Labour to prove it had abandoned its reformist past. Stricter “law-and-order” procedures and demands for harsher measures against children in particular were central to the then Opposition Home Affairs spokesman Tony Blair's pitch for leadership of the party.

Six years after the event, and away from the reactionary lynch mob atmosphere created by the media, more sober considerations of the tragic events surrounding the death of a two-year-old and the ruination of the lives of two eleven-year-olds are beginning to emerge. Last month, a

member of the Bulger trial jury said that rather than being found guilty of murder, the verdict should have been “guilty as frightened and largely unaware children who made a terrible mistake and who are now in urgent need of psychiatric and social help”.

This followed remarks by Chief Inspector of Prisons, Sir David Ramsbotham, calling for the boys to be released soon after they are 18. Ramsbotham was particularly concerned with the prospect of the boys being transferred from juvenile detention to an adult gaol. Commenting on the prison system he said, “I would not wish them to go to some of the institutions I have seen.”

For the political elite, humane considerations about the fate of the two boys have no place. Ramsbotham was immediately forced to withdraw his remarks, “apologising unreservedly” to Home Secretary Jack Straw for speaking on a subject “outside his remit”.

Not to be left out, Conservative former Home Secretary Howard, speaking on a BBC documentary broadcast Tuesday, defended his setting of a minimum sentence of 15 years.

He claimed to have “made a very substantial allowance for the fact that the offenders were young. If they remain in custody for 15 years, they will be released when they're 25. They will have virtually the whole of their adult lives in front of them.”

Publicly identified at the trial and vilified in the media ever since—not to mention the emotional and psychological scaring of the events of 1993 themselves—the two boys have had their own childhood taken from them in order to satisfy the reactionary social agenda of the establishment parties.



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