The Republic v Gorman and Others (2004) AHRLR 141 (GhSC 2004)

The Republic v Gorman and Others (2004) AHRLR 141 (GhSC 2004)

The Republic v Kevin Dinsdale Gorman, Mohammed Ibrahim Kamil, John David Logan, Frank David Laverick, Alan William Hodgson, Seven Leonhard Herb

Supreme Court of Ghana, 7 July 2004, Criminal appeal J/3/3/2004

Judges: Akuffo, Wood, Twum. Date-Bah, Ocran

Appeal against decision of the Court of Appeal rescinding bail granted to the appellants by the trial court

Constitutional supremacy (6)

Fair trial (bail, 8, 9; trial within reasonable time, 21, 23; defence, 39, 40)

Personal liberty (bail, 9-12, 25, 30, 34, 43, 50)

Limitations of rights (public interest, 37)

Interpretation (international standard, 38, 50)

Stare decisis (41, 42)

Modibo Ocran JSC

[1.] This Court gave its ruling on this case on 11 June 2004 and reserved its reasons for the ruling for today, 7 July 2004. We now proceed to give the reasons for our earlier ruling.

[2.] This is an appeal against the refusal of the Court of Appeal to grant an application for bail to the appellants. The six accused persons were arraigned before the Greater Accra Regional Tribunal on 28 January 2004 on narcotics-related charges based on sections 56(c), 1(1) and 2 of the Narcotic Drugs (Control, Enforcement and Sanctions) Law 1990 (PNDC 236). The Tribunal as trial court granted bail on 3 February 2004 to all the accused on specified conditions. The Attorney-General's office appealed against the grant of bail to the Court of Appeal, which delivered a ruling on 3 March 2004 upholding the appeal and thereby rescinding the grant of bail in respect of all the accused. This matter came before us on further appeal by all but one of the accused persons, namely, the second accused.

[3.] The grounds of appeal were set out in their respective notices of appeal as follows. For the first accused, that:

> i. The decision by the Court of Appeal to allow the appeal against the grant of bail to 1st accused/appellant was unreasonable having regard to all the circumstances of the case.
>
> ii. The decision by the Court of Appeal to allow the appeal against the grant of bail to 1st accused/appellant resulted in a gross miscarriage of justice to 1st accused/appellant, the reason

being that the basis of the appeal before the Court of Appeal and the reasons given by the said Court for the revocation of the bail granted to 1st accused/appellant warranted, at the very least, a review of the conditions upon which 1st accused/appellant was granted bail and not an outright refusal of same.

iii. The Court of Appeal erred in its interpretation of the applicable provisions of the Criminal Code 1960 (Act 30) as against the relevant provisions of the Constitution 1992 of the Republic of Ghana on the grant of bail to accused persons, the reasons being that it downplayed the constitutional provisions providing for the pre-trial release of an accused person on bail in favour of the guiding (not mandatory) principles governing the grant of bail as contained in section 96 of Act 30.

For the third, fourth and fifth accused, that:

3.1. The judgment of the Court of Appeal rescinding the order for the grant of bail to the 3rd, 4th, and 5th accused/applicants/respondents/appellants by the Greater Accra Regional Tribunal is unreasonable and cannot be supported having regard to the evidence placed before the Court.

3.2. The Court of Appeal erred when it failed to adequately consider the evidence before it that the 3rd, 4th, and 5th accused/applicants/respondents/appellants are international businessmen who at the material time had fixed places of abode within the jurisdiction and rather found, contrary to the evidence before the Court, that they had no fixed places of abode, particularly when the Republic/respondent/appellant/respondent did not challenge the assertions of the 3rd, 4th, and 5th accused/applicants/respondents/appellants at the trial Court and also the evidence presented at the appellate Court that they had fixed places of abode and thereby occasioned a substantial miscarriage of justice.

3.3. The Court of Appeal erred in law in rescinding the Order for the grant of bail by the Greater Accra Regional Tribunal when it made a finding, based on speculation and contrary to the evidence before it, that the 3rd, 4th, and 5th accused/applicants/respondents/appellants as international businessmen and all gainfully employed, will not appear to stand trial when there was no such real evidence to this effect before the Court.

3.4. The Court of Appeal erred in law in rescinding the bail granted to the accused/applicants/respondents/appellants when it failed to consider adequately the import of the provisions of article 19(2)(c) of the 1992 Constitution in relation to s 96(1)(2)(3)(4) and (5) and section 96(6) of the Criminal Procedure Code 1960 Act 30, as amended, with respect to the grant of bail and thereby occasioned a substantial miscarriage of justice.

3.5. The Court of Appeal erred in rescinding the Order for the grant of bail by the Greater Accra Regional Tribunal to the 3rd, 4th, and 5th accused/applicants/respondents/appellants and misdirected itself when it sought to rely on article 14(4) of the 1992 Constitution even though there was no evidence before it that the trial Court had relied on article 14(4) of the 1992 Constitution in granting bail to the 3rd, 4th, and 5th accused/applicants/respondents/appellants.

3.6. The Court of Appeal erred in law in rescinding the bail granted the 3rd, 4th, and 5th accused/applicants/respondents/appellants when it failed to follow the mandatory constitutional provisions as enshrined in article 129(3) and article 136(5) of the 1992 Constitution in relation to its judgments and more specifically in relation to the judgment appealed against herein in as much as they were bound, per the aforesaid provisions, to have followed the Supreme Court decision and its own decision in the case of the Republic v Court of Appeal: Ex parte Attorney General (Frank Benneh Case) 1998-1999 SC GLR 559, which was cited to them and thereby occasioned a

substantial miscarriage of justice ...

For the sixth accused, that:

1. The judgment of the Court of Appeal rescinding the bail granted to the 6th accused/respondent/appellant by the Greater Accra Regional Tribunal occasioned substantial miscarriage of justice.

2. The judgment of the Court of Appeal rescinding the bail granted by the Greater Accra Regional Tribunal to the 6th accused/respondent/appellant was unreasonable in view of the evidence on record before the Court of Appeal.

3. The learned Judges of the Court of Appeal ... erred in law when they resorted to article 14(4) of the 1992 Constitution to rescind the bail granted to the 6th accused/respondent/appellant, instead of relying on article 19(2)(c) and (e) of the 1992 Constitution vis-à-vis section 96(7) of the Criminal Procedure Code, 1960, as amended, to affirm the bail granted the 6th accused person and, if need be, on the Appeal Court's own terms and conditions.

4. The learned Judges of the Court of Appeal ... erred in law as they rescinded the bail granted to the 6th accused/respondent/appellant in contravention of articles 129(3) and 136(5) of the 1992 Constitution, in view of the Supreme Court decision in the Republic v Court of Appeal: Ex parte Attorney General (Frank Benneh Case) (1998-1999) SC GLR 559.

5. The learned Judges of the Court of Appeal ... erred in law in rescinding the bail granted to the 6th accused/respondent/appellant, in view of the finding by the learned Judges of the Court of Appeal that the 6th accused/respondent/appellant has his fixed place of abode within the jurisdiction, coupled with the failure of the Court of Appeal Judges to consider the willingness of the 6th accused/respondent/appellant to provide persons with good character to serve as his sureties and to provide substantial securities to ensure his attendance in court for his trial, in addition to ignoring the fact that the 6th accused/respondent/appellant is married to a Ghanaian with 2 very young children - as borne out by the evidence on record before the Court of Appeal ...

[4.] We dismissed these appeals and thereby upheld the revocation by the Court of Appeal of the bail granted to the accused by the regional tribunal. Meanwhile, the trial of the accused on the substantive charges has commenced.

Applicable law and policy

[5.] The written submissions of the appellants and the respondent raise certain fundamental issues in respect of criminal procedure and constitutional law. The Court will therefore deal with these matters in general terms, before assigning more specific reasons for refusal of bail in respect of each of the appellants. In this manner, we expect to clarify and enunciate the general policy, principles and rules of law governing the grant or refusal of bail in our legal system, spelling out the interface between and among the relevant rules of criminal procedure, case law, and the Constitution of 1992.

[6.] Underlying our principles for decision on applications for bail is the effective enforcement of our criminal law guided by due process considerations, which constitute the procedural aspects of our commitment to protect the liberty of the individual. A true system of criminal justice must indeed reflect both aspects of criminal jurisprudence. If not, one of two consequences will follow: either the law enforcement agencies of the state ride roughshod over the rights of the accused; or criminals would have a field day in the system as they roam the streets in full liberty and with contempt for the efficacy of our criminal enactments. A good starting point of analysis is the Ghana Constitution of 1992; for, in the final

analysis, all our laws and procedures, whether predating or postdating this document, and whether embodied in statutes or case law, must be consistent with the Constitution. Counsel for the first accused/appellant is right in asserting that the Criminal Procedure Code of 1960, as amended, continues to be valid only in so far as it is consistent with the 1992 Constitution. The continued validity of all norms predating the Constitution, including the Criminal Procedure Code, can be established only if one can demonstrate that they were in a legal-formalist sense, 're-created', 'continued in effect', 'adopted', or 'saved' expressly or impliedly by the 1992 Constitution. In any event, they must all be consistent with that Constitution. Indeed, Chapter four, article 11(6) expressly provides that:

> The existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of this Constitution, or otherwise to give effect to, or enable effect to be given to, any changes effected by this Constitution.

[7.] The 1992 Constitution contains unequivocal protection for accused persons in the pre-trial and trial stages of the criminal process. Article 19(2)(c) enunciates the age-old common law presumption of the innocence of the accused. It has been argued by counsel for some of the appellants in this case that this provision implies a further presumption in favour of the grant of bail; and that the denial of bail for their clients thus flies in the face of article 19(2)(c). In this connection, counsel referred to The Republic v Court of Appeal: Ex parte The Attorney General [1998-1999], SC GLR 559 - better known as the Benneh case - which will be discussed at greater length infra. For the moment, it is enough to point out that article 19(2)(c) of the Constitution is meant to be enjoyed equally by the accused held in pre-trial detention as well as the accused granted bail. For, as Coleridge said in R v Scaife [1841] 5 JP 406, at 406:

> I conceive that the principle on which parties are committed to prison by magistrates, previous to trial, is for the purpose of ensuring the certainty of their appearing to take the trial ... it is not a question as to the guilt or innocence of the person.

[8.] Since the presumption holds for both the accused in custody and his counterpart on bail, there are no self-contained criteria for sifting between the two categories of accused persons. In that sense, the presumption of innocence is necessary but not a sufficient ground for the grant of bail. This is not surprising. The issue of bail primarily addresses the freedom, or lack thereof, of the accused 'to walk the streets' after being charged with an offence; it is principally associated with the pre-trial phase, although it has obvious consequences for the liberty of the accused during the trial as well. By contrast, the presumption of innocence primarily addresses the due process issue of burden of proof or of persuasion once the trial commences. Thus the strong derivation of a presumption of the grant of bail from a presumption of innocence appears too sanguine.

[9.] While one might attempt to derive a presumption of grant of bail from the constitutional presumption of innocence, as Wiredu JSC (as he then was) sought to do in the Benneh case (supra), a stronger basis for a presumption of grant of bail under our Constitution might be found in article 14. Indeed, article 14(4) embodies a direct duty to grant bail in a specific situation, ie when a person is not tried within a reasonable time. But this provision does not exhaust the grounds upon which bail is granted. We must also consider the cumulative effect of article 14(1) and 14(3), which work on the premise that every person is generally entitled to his liberty except in specified cases, and that even where his liberty is so restricted under one or more of those cases, he must be produced before a court within forty-eight hours, or regain his liberty.

[10.] Basing ourselves on article 14(1), 14(3), and to some extent on article 19(2)(c), of the 1992 Constitution, we hold that there is a derivative constitutional presumption of grant of bail in the areas falling outside the courts' direct duty to grant bail under article 14(4). However, this by itself is not

dispositive of the legal problem of bails, for it seems clear that this presumption is rebuttable. Any other reading of the Constitution would lead to the untenable conclusion that every accused person has an automatic right to bail under our Constitution. This presumption is, for example, rebutted in cases where a statute specifically disallows bail based on the nature of the offence, such as the situations outlined in section 96(7) of the Criminal Procedure Code.

[11.] Outside article 14(4) of the Constitution and section 96(7) of the Criminal Procedure Code (Act 30), the presumption of the grant of bail retains judicial discretion in the matter of bails. However, the exercise of this discretion remains fettered by other relevant provisions of our law. This is where the other provisions of section 96(1) of the Code fall into place. They serve the purpose of clarifying the manner in which this discretion may be exercised, including the factors that should be taken into account in granting or rejecting a plea for bail. Because of our rejection of the notion that the constitutional presumption of innocence calls for an automatic enjoyment of bail, we hold further that there is no prima facie inconsistency between the general provisions of section 96 of the Criminal Procedure Code and the Constitution of 1992.

[12.] Thus section 96 of the Code provides for judicial discretion in the matter of bail, but should always be read in light of the constitutional presumption of grant of bail as well as the direct constitutional duty to grant bail. This section embodies both a positive right and a negative duty for the courts. In the exercise of their judicial discretion as constitutionally circumscribed, courts are accorded under section 96(1) the general right to grant bail as long as the accused person is prepared to give bail or enter into a bond. The section impliedly grants the right to refuse bail as well. It should also noted that this provision does not list any specific grounds for the grant of bail; and one would surmise that any reasonable ground, such as the deterioration of the health of the accused while in detention, would suffice as a proper ground for the grant of bail. But it is made subject to other provisions of the section. The second aspect, embodied in section 96(5), states a general duty to refuse bail in certain situations, including the likelihood that the defendant may not appear to stand trial. This is followed by section 96(6), which lists the factors the courts should take into account in assessing the likelihood of the defendant's non-appearance for trial. These code provisions dovetail neatly into articles 14 and 19 of the 1992 Constitution.

[13.] In a trilogy of cases decided in the 1970s and 1980, Taylor J (as he then was) made a serious and concerted effort to analyse and synthesise the law of bails in Ghana, and, in particular, to clarify section 96 of the Criminal Procedure Code in relation to the Constitution of Ghana predating the 1992 Constitution. This Court picks up the case law of bails where Justice Taylor left off.

[14.] In the first of these cases, Okoe v Republic [1976] 1 GLR 80, Taylor J (as he then was), seized the opportunity to trace the history of the power of our courts to grant bail, beginning from the English roots of our legal history, through the establishment in 1876 of the Gold Coast Supreme Court, and culminating in the consolidation of the rules on bail in the Criminal Procedure Code (as amended) and article 15(3) and (4) of the 1969 Constitution. Section 96(7) has been introduced into the Code in 1975 by the Criminal Procedure Code (Amendment) Decree, 1975 (NRCD 309).

[15.] Okoe involved a charge of forcible entry unto land with violence by the acting head of an Accra traditional family. Having been denied bail by the circuit Court, he applied to the High Court for bail on the grounds that he was prepared to provide substantial sureties, and that his imprisonment would affect his health, given his age and physical condition.

[16.] In arriving at his decision to grant bail, Taylor J cited with approval Lord Russell of Killowen CJ in the case of R v Spilsbury (1898 2 QB 615 at 620) where Lord Russell, as summarised by Taylor J intimated that 'a court of record has power to grant bail to any person committed or remanded in custody

by an inferior court except of course in cases where the power is expressly taken away by statute ...'. Relating this opinion to our own Criminal Procedure Code, Taylor J points out that section 96(1) merely restated the power of the courts to grant bail; and that 96(2) simply consolidated the common law discretionary power which the High Court, as a court of record, had: 'This provision has nothing to do with delay in the trial, which is covered by article 15(4) of the [1969] constitutional provisions.'

[17.] On the specific issue of the relationship between section 96 of the Code and article 15(4) of the Constitution of 1969, Taylor stated at 95-96 that:

> Once there is an unreasonable delay in prosecuting the case, then section 96 of Act 30 [as amended] is in my view inapplicable, and article 15(3)(b) and (4) of the Constitution, 1969, becomes applicable and in such a situation, bail in all cases must be given subject only to the conditions prescribed in the articles.

[18.] In other words, the Code provisions did not override the 1969 constitutional rule that bail was to be granted if the trial was not held within a reasonable time. In other respects, the grant of bail remained within the discretion of the Court, as he had previously argued.

[19.] Okoe, however, did not involve murder or any of the other offences stipulated in section 19(7) of the Code. Thus in Dogbe v The Republic [1976] 2 GLR 82, Justice Taylor had occasion to pick up another aspect of section 96, namely, the relationship between section 96(7) of the Criminal Procedure Code and article 15(4) of the 1969 Constitution. Dogbe and sixteen others had been committed to the High Court on charges of murder and abetment of murder on 31 January 1974. The High Court twice denied the plea for bail in spite of the averment of their counsel that 'four of the accused persons were aged 65 and were very ill and needed immediate medical attention ... and they had even had to be carried to court.' In denying bail, Taylor J drew attention to section 96(7) of the Criminal Procedure Code, which mandated the refusal of bail in murder, treason, etc. But he was at pains to point out that even this section is trumped by article 15(4) of the 1969 Constitution. He wrote on 96:

> A careful reading of article 15(4) shows clearly that in all cases, murder cases included, if an accused person in custody is not tried 'within a reasonable time', then he is entitled to be released. The most important matter for consideration is whether he is 'not tried within a reasonable time', and the meaning of the expression 'within a reasonable time' becomes necessary for a decision. (Emphasis supplied).

[20.] In the third case, Brefor v The Republic [1980] GLR 679, the applicant for bail had been charged with murder for allegedly firing an arrow into one of the two persons who had apparently stolen his goat. The victim of the shooting later died from his wounds, and in April 1976 the applicant was taken into police custody, where he was held for over three years pending his trial. It should be remembered that by the time of this application, Ghana had witnessed the overthrow, not only of the 1969 Constitution, but the 1979 Constitution as well. Taylor disposed of the legal implications of these events by ruling that both the National Redemption Council (Establishment) Proclamation, 1972, and the Armed Forces Revolutionary Council (Establishment) Proclamation 1979 made a saving respectively for articles 15(4) of the 1969 Constitution and 21(4) of the 1979 Constitution.

[21.] Having disposed of this important but preliminary matter, Taylor then tackled the main issue in that case, namely, whether the Code provision in section 96(7) stipulating mandatory refusal of bail in murder and certain other offences survived the 1969 constitutional entitlement to bail in trials which had experienced unreasonable delays. The learned Judge stated: 'Upon consideration of all the principles of interpretation I have canvassed in this ruling, it is my firm view that article 15(3)(b) and (4) of the Constitution, 1969, are subsisting provisions in no way repealed by section 96(7) of Act 30'. Taylor

continued: 'the law immediately before the Constitution, 1979, and after it, is that a court is to refuse bail in murder cases, etc, except in the cases of unreasonable delay in trial as provided in article 21(4)(a) of the Constitution, 1979.' Taylor in this specific case denied bail because he did not think the delay was unreasonable, but his basic holding remained intact. His position is consistent with our own holding that the analogous provision in the 1992 Constitution, article 14(4), mandates the grant of bail when the accused is not tried within a reasonable time.

[22.] However, section 96 of the Criminal Procedure Code has been attacked from yet another angle. Counsel for some of the accused/appellants argue, in effect, that while that section in general terms may not be inconsistent with, and has indeed survived, the 1992 Constitution, some of the factors listed in section 96(6) of the Code are no longer compatible with that Constitution. In particular, it is asserted that the 'nature of the accusation' and the 'severity of the punishment' as factors relevant to the decision to refuse bail are not mentioned anywhere in the relevant provisions of the Constitution. To buttress this argument, counsel cites Brefor v the Republic [1980] GLR 679, in which Taylor J (as he then was), might be fairly interpreted as holding that the 1969 and 1979 Constitutions, unlike section 96(6) of the Criminal Procedure Code (1960), did not make distinctions in the nature of offence as regards the availability of bail. Indeed, that statement would also be true of article 14(4) of the 1992 Constitution, which is similar in language to the analogous provision of the two earlier Constitutions, referred to above.

[23.] But it is important not to misrepresent Justice Taylor's statement here. Article 15(4) of the 1969 Constitution, like article 14(4) of the 1992 Constitution, dealt with the question of bail in the specific situation where the person arrested or detained is not tried within a reasonable time. The duty to grant bail arising in such a situation remains applicable irrespective of the nature of the offence. Thus, even in the case of offences mentioned in section 96(7) of the Criminal Procedure Code, bail must be granted if there is no trial within a reasonable time. Justice Brobbey, in his Practice & Procedure in the Trial Courts & Tribunals of Ghana (vol I, 2000, 468), writes:

> Since the Constitution is the fundamental law of the land, to the extent that article 14(3) and (4) mandate bail for 'all' offences while Act 30 s 96(7) excepts the grant of bail in murder cases, etc, the latter is deemed to have been repealed by the former by reason of the inconsistency. This was the view taken in Dogbe v The Republic [1976 2 GLR 82] and Brefor v The Republic [1980 GLR 679]. There is no doubt that the latter view backed by the two cases is more accurate.

[24.] This Court is in entire agreement with Justice Brobbey's opinion. However, this viewpoint leaves untouched the problem of bail in those other situations where a trial is commenced within a reasonable time. Herein lies the continued relevance of sections 96(5) and (6) of the Criminal Procedure Code.

[25.] In those situations falling outside article 14(4), distinctions as to the 'nature of the accusation' and 'the severity of the punishment' remain not only valid but most useful. The Court of Appeal, in its judgment in the case presently before us, stated that 'the tribunal in granting bail should have considered adequately that the offences were serious and grave'. Counsel for the first accused/appellant makes much of the unfortunate use of the epithet 'grave' and insists that the gravity of an offence cannot be a factor in the decision to refuse bail because it is not mentioned in the Criminal Procedure Code. However, he does not deny that the nature of the accusation retains its place among the statutory factors listed for consideration. While the epithet 'grave' and its corresponding noun, 'gravity', are not found in the relevant provisions of the Code, the formulation of the legal position as articulated by the Court of Appeal has occasioned no miscarriage of justice nor introduced a fundamentally erroneous proposition of law.

[26.] As a matter of logic and linguistic analysis, the gravity of an offence may legitimately inform our assessment of the nature of that offence. In other words, the gravity of an offence may serve as a possible index of the nature of an accusation. Coleridge J, commenting on the English Criminal Procedure Act,

1848, in R v Robinson [1854] 23 LJQB 286, suggested that such a consideration in the study of the nature of an accusation was not out of place. He wrote:

> When you want to know whether a party is likely to take his trial, you ... must be governed by the answers to three general questions. The first is, what is the nature of the crime? Is it grave or trifling? ... The second question is, what is the probability of conviction? ... The third question is, is the man liable to a severe punishment? (Emphasis supplied).

[27.] Counsel for the first accused/appellant decries the mention of the gravity of an offence in the discussion of bail as a 'moralistic proposition' which has no place in our criminal jurisprudence. A derogatory reference to a moralistic proposition may simply amount to a rejection of a valid relationship between criminal law and morality. More likely, it is an articulation of the view that, while there is an established relationship between criminal law and morality, a particular moral norm or set of norms has not yet been transformed into a legal norm under the 'rules of recognition' of our legal system, in the sense in which Professor HLA Hart of Oxford used that term in his seminal book, The Concept of Law.

[28.] However, morality as a historical or material source of criminal law has been with us since the Laws of Draco and the Codes of Justinian, the last of the Roman emperors. On the other hand, if counsel's discomfiture with the term 'gravity of the offence' relates to an assumed failure of the rules of recognition in our legal system, we have already noted that gravity is simply one index of 'the nature of the accusation', a phrase which is expressly provided for in the Criminal Procedure Code, 1960 (Act 30).

[29.] The continued relevance of the severity of the punishment as a factor in the decision not to grant bail has also been attacked in some of the statements of cases submitted by counsel. Unlike the gravity of the offence, the severity of the punishment is specifically provided for in section 96(6) of the Criminal Procedure Code. Justice Amissah, in his Criminal Procedure in Ghana (1982) 183, has stated that 'the more serious the offence with which he is charged and the heavier the penalty, the more likely it is that the accused will not when granted bail appear to stand the trial.' However, it was submitted by counsel that since the grant of bail is not ruled out in offences such as defrauding by false pretences, which could potentially attract punishment as high as 25 years imprisonment, the relevance of this subsection appears to be seriously undermined.

[30.] This submission is without merit. It overlooks the fact that the severity of the punishment is but one of many factors utilized in arriving at a more basic decision expressed in section 96(5); namely, the likelihood of the defendant not appearing to stand trial. Thus bail may be granted even in the face of the severity of an offence if there are other considerations in the mix of stipulated factors that satisfy the Court that the defendant is likely to appear to stand trial.

[31.] Nonetheless, counsel for the appellants invoke this Court's decision in The Republic v Court of Appeal: Ex parte The Attorney General - the Benneh case - to press their submission that bail must be granted. This case also involved narcotics-related offences under the Narcotic Drugs (Control, Enforcement and Sanctions Law 1990 (PNDC 236). The penalties provided under the statute were severe, and included imprisonment for not less than ten years as well as forfeiture of drug-related property. The Greater Accra Regional Tribunal as the trial Court refused the application of the accused for bail pending trial. However, the Court of Appeal allowed an appeal for bail, which was later upheld by the Supreme Court. Counsel for appellants in the case currently before us cite our decision in Benneh to demonstrate that bails are available even in the case of offences involving severity of punishment, including dealings in narcotics. It is clear from our analysis in the immediately preceding paragraph that we are in agreement with counsel on this point. But this admission does not take us very far in our analysis.

[32.] In the first place, the gravamen of the complaint by the Attorney-General in the Benneh case clearly

centred on the claimed lack of jurisdiction of the Court of Appeal in entertaining an appeal from the regional tribunal in the face of alleged procedural irregularities in the record and service of proceedings. The Attorney General complained, inter alia, that the Court of Appeal heard a purported petition of appeal for bail filed in the registry of the regional tribunal which had not been properly forwarded to the Court or listed for hearing by the registry of the Court of Appeal, and consequently asked that the proceedings, rulings and orders, including the grant of bail, be quashed. Wiredu JSC (as he then was) wrote that 'the main issue raised for consideration in the present application is whether the Court of Appeal was competently seized with the appeal brought on behalf of the accused to justify the Court dealing with it.' [1998-99] SC GLR 566.

[33.] While the Supreme Court did uphold the proceedings and ruling of the Court of Appeal, including the grant of bail, the case did not dwell on the legal question of the proper grant or denial of bail. Wiredu JSC, delivering the judgment for the majority, devoted only a portion of a paragraph to this question. In that respect he sought to draw a relationship between the constitutional presumption of innocence and the right to bail, but was also quick to mention the relevance of the particular circumstances of each case. He wrote: 'the accused is presumed to be innocent until it is otherwise established. It would therefore be unjust to deprive him of his right to enjoy his freedom in the absence of any law prohibiting the grant of bail to him under the circumstances as established by the facts of this case.' By this statement, the learned justice could not be taken to mean that, outside the areas of prohibited bail, the courts are under an obligation to grant bail on account of the constitutional presumption of innocence. Thus, the Benneh case does not, and cannot, stand for the proposition that bail must be granted in all narcotics cases because they are not among the offences in which bails are statutorily unavailable.

[34.] We are back to the continuing relevance of judicial discretion in the matter of bails, and the proper exercise of such discretion. There will be narcotics cases in which bail will be granted; and other narcotics cases in which bail will be denied. There will be non-narcotics cases involving severity of punishment in which bail will be granted; and cases of the same genre in which bail will be denied. There is no logical incoherence or inconsistency in such a judicial phenomenon; for the mix of factors embedded in section 96(5) and (6) of the Criminal Procedure Code will hardly be the same in all such cases. What we ought to guard against in this respect is the arbitrary exercise of judicial discretion when called into play, rather than the denial of judicial discretion as such.

[35.] In the Benneh case, it would appear from the record that there were circumstances that might have weighed upon the Court of Appeal and the Supreme Court to grant bail. One such circumstance was the health of the accused. Among the Court of Appeal records was an affidavit dated 14 July, 1998, filed by Benneh and supported by reports from a doctor and the police, in which the accused swore that 'I have been in and out of the hospital since I was brought down from Geneva'. (See Motion on notice for an order to be admitted to pending bail, in the Superior Court of Judicature, in the Court of Appeal, Accra AD 1998, filed 29-7-98, exhibits KQ-1&2.) Serious medical conditions while the accused is in detention may indeed be taken into account in the exercise of the Court's permissive discretion under section 96(1) of Act 30.

[36.] The constitutional validity of the continued application of the rules on bail embodied in section 96 of the Code has been challenged on more general human rights grounds. It has been suggested by some of the counsel in this case that the refusal to grant bail is in some sense a violation of the fundamental human rights enshrined in the 1992 Constitution. We have already dealt with the constitutional guarantee of bail in article 14(4), which arises from the fact that arrest and detention constitute a form of deprivation of personal liberty which needs to be constitutionally justified. We have also constructed a presumption in favour of grant of bail premised on the general tenor of articles 14 and 19(2). All these provisions fall under Chapter five of the Constitution entitled 'Fundamental Human Rights and Freedoms'.

[37.] However, we must always guard against a sweeping invocation of fundamental human rights as a catch-all defence of the rights of defendants. People tend to overlook the fact that the Constitution adopts the view of human rights that seek to balance the rights of the individual as against the legitimate interests of the community. While the balance is decidedly tilted in favour of the individual, the public interest and the protection of the general public are very much part of the discourse on human rights in our Constitution. Thus article 14(1)(d) makes it clear that the liberty of certain individuals, including drug addicts, may be curtailed not only for the purpose of their own care and treatment, but also 'for the protection of the community'. Article 14(1)(g) sanctions the deprivation of an individual's liberty upon reasonable suspicion of the commission of an offence under the laws of Ghana ostensibly for the protection of the community and the body politic. Article 21(4)(c) further authorises the imposition of restrictions in the interest of public safety and public health, among other concerns.

[38.] Moreover, it is important to read the Constitution as a holistic document, that is, one in which all the various parts fall into place and have meaning assigned to them. The Directive Principles of State Policy (Chapter six) constitute an important statement of the vision of the framers of the Constitution. In the specific subject-matter before us - the problem of narcotics importation and their possible transhipment - article 40(c) is instructive. Under this article, the promotion of respect for treaty obligations and for international law in general is viewed as a principle of state policy. Thus Ghana, as a party to the United Nations Convention on Narcotic Drugs and Psychotropic Substances, shoulders a constitutional exultation to enforce this Convention, while at the same time protecting the constitutional presumption of innocence of all accused persons.

[39.] Reference has been made by counsel for the first accused/appellant to article 19(2)(e) of the Constitution, which provides that an accused person be given adequate time and facilities for his/her defence. Counsel points out, quite rightly, that these facilities include the right to consult with his lawyers. But then counsel proceeds to make the submission that the accused is entitled to bail by virtue of this provision and the consequential right of consultation. This argument is completely untenable as a matter of logic and criminal justice policy; for it would mean that whenever an alleged criminal is arrested, he/she must be granted bail upon informing the authorities that he or she needed or wanted to consult with lawyers. There is no reason why the accused person cannot consult with his counsel while in detention; indeed, consultation under such conditions is an established practice. Moreover, the denial of such consultation would be a clear infringement of the Constitution, for which the accused person may petition for a remedy.

[40.] Counsel for the first accused cites the American case of Kinney v Lenon 425 F 2d 209 (9th cir 1970) in support of his submission on the right to bail based on the need to consult with lawyers. But counsel loses sight of 'the peculiar circumstances' of this case so soon after amply setting them out in his statement of case. This involved a situation in which it appeared reasonable to release the accused so that he could get back into the community to physically identify potential witnesses. The accused was a black man residing in a black community; the potential witnesses were black; and it was felt that the physical identification of such witnesses in such a community possibly by his white attorneys would be fraught with great practical difficulty. Under the circumstances, the Court ruled that 'failure to permit the appellant's release for the purpose of aiding the preparation of his defence unconstitutionally interfered with his due process right to a fair trial'. In the case before us, there are no such peculiar circumstances. Thus there is no obvious violation of due process rights of the accused by their continued detention, provided always that they are assured of reasonable facilities to consult with their lawyers in the course of their trial.

[41.] A submission based on the status of judicial precedent in our Constitution has been raised in the statements of cases by counsel for the first and sixth accused. Article 136(5) provides that the Court of Appeal shall be bound by its own previous decisions. This is made subject to article 129(3), which

enjoins the Court of Appeal to follow the decisions of the Supreme Court. This same section states that the Supreme Court should ordinarily treat its own previous decisions as binding, but is entitled to depart from them 'when it appears right to do so'. Thus the Constitution imposes the stare decisis version of judicial precedent on the Court of Appeal, but adopts only a deferential view of precedent for the Supreme Court as regards its own rulings. Incidentally, while this deferential view may be described as a 'weak form' of precedent, there is a strong policy justification for maintaining it in respect of courts of last instance; or else the development and adaptation of the law to evolving cultural and historic phases of the society might very well fall into atrophy. Nonetheless, from the provisions of articles 129(3) and 136(5), Counsel seek to make the submission that the 'refusal' of the Court of Appeal to follow not only its own earlier decision but also the decision of the Supreme Court in the Benneh case is unconstitutional. However, the duty to follow a 'decision' in this constitutional context refers to the ratio decidendi of the case, that is, the reason for the decision, or the holding or proposition of law emerging from the case, not to the specific result of the case, that is, the actual decision to acquit or convict, or to find for one party rather than the other. Thus the holding of an earlier case as applied to a subsequent case might actually lead to a different result or judgment because the facts or circumstances of the two cases are different in some significant sense.

[42.] To follow the decision in the Benneh case in which bail was granted in narcotics-related charges is not to say that the later decision must also lead to a grant of bail, without regard for the potentially different circumstances of the later case. Moreover, it cannot be said that a lower court has refused to follow the 'decision' of a higher court without reference to a clear and correct statement of the holding of the case as disposed of in the higher court. As explained in earlier paragraphs, the Benneh case did not hold that bail must be granted in every case of narcotics-related charges; it merely demonstrates that bail is not ruled out even in narcotics cases. Thus we hold that the Court of Appeal decision of 3 March 2004 in the present case of Gorman and Others did not violate the Constitution; and we further hold that in making its ruling in this case on 7 June, 2004, the Supreme Court did not depart from the holding in the Benneh case as properly understood. There are appreciable factual differences between this case and that of the Benneh case to warrant a departure from the specific result reached in the latter case.

[43.] Drawing on our general analysis of the law above, we summarize our holdings as follows:

1. The constitutional presumption of innocence embedded in article 19(2)(c) of the 1992 Constitution does not import an automatic right to bail.

2. The constitutional duty of the Court under article 14(4) of the Constitution, to grant bail to the accused if he is not tried within a reasonable time, is applicable irrespective of the nature of the accusation or the severity of the punishment upon conviction.

3. In the cases falling outside the direct duty to grant bail under 14(4), there is a constitutional presumption of grant of bail drawn from the spirit of the language of articles 14(1) and (3), and 19(2)(c), in further protection of persons charged with offences in situations which do not mandate the grant of bail.

4. The said constitutional presumption of grant of bail is rebuttable; and it is in fact rebutted by a statutory provision that expressly disallows bail, such as the circumstances outlined in section 96(7) of the Criminal Procedure Code.

5. Outside the strictures of section 96(7) of the Code and article 14(4) of the Constitution, the presumption of the grant of bail is still extant, and is exercised under judicial discretion which is itself fettered by other provisions of section 96.

6. There is no prima facie inconsistency between the relevant provisions of the Code and the 1992

Constitution.

7. Considerations of the nature of an accusation and the severity of punishment upon conviction, as part of the decision not to grant bail under section 96(5) and (6), are constitutional; and that the gravity of an offence may be viewed as an aid in understanding and categorizing the nature of an accusation.

8. The Court of Appeal, in arriving at its judgment of 3 March, 2004 to rescind bail in this matter, at variance with the judgment in the Benneh case to grant bail, did not violate the constitutional provision on stare decisis; and

9. The Supreme Court is not bound by the specific result of the Benneh case since the factual contexts are distinguishable.

Application of analysis to the accused/appellants

[44.] We now apply the result of these holdings to the circumstances of each of the appellants. The second accused, a Ghanaian national, did not appeal the quashing of his bail. We therefore made no ruling on him, and give no further consideration to his case.

[45.] In respect of the first accused/appellant, an American and British dual national, we are persuaded that he has a fixed place of abode in Ghana: he owns a house in Tema, is married to a Ghanaian woman, and has five children in all with Ghanaian women. Among the accused, he probably has the strongest ties to Ghana. However, the presence of a fixed place of abode is not dispositive of the matter. The nature of the accusation and the severity of the punishment upon conviction is such that even a native-born Ghanaian resident in Ghana, owning multiple homes in Ghana, and capable of claiming an unbroken family lineage in Ghana stretching over the past 500 years, might well be persuaded to flee the jurisdiction and avoid the trial. What makes the case against bail even stronger in respect of the first accused is that the narcotics in question were allegedly found in his home. Thus the fear that he would flee from the jurisdiction is not unreasonable.

[46.] The third accused/appellant, a British national, does not appear to have strong ties to Ghana, even though he is said to have lived here for around 10 years as an employee of business interests or as an independent businessman. His partial equitable ownership of an oil tanker berthed in Nigeria has no relevance to the determination of a fixed place of abode in Ghana. There is a legitimate question whether he had a fixed place of abode in Ghana at the time of his arrest. The Court of Appeal was of the opinion that he did not have such an abode; and we have no reason to contradict that finding. It is important to emphasize that the notion of a fixed place of abode connotes more than having a roof over one's head. The fear that he would probably flee from the jurisdiction is not unreasonable.

[47.] The fourth accused/appellant, a British national, had never really lived in Ghana, but paid regular visits here. He is described as an international businessman, with an equitable interest in an oil tanker which was once refurbished at the Tema shipyards and drydock. None of these facts seriously suggest the presence of a fixed place of abode for him. We agree with the Court of Appeal that he has no place of abode in Ghana. The likelihood of flight from the jurisdiction is very real.

[48.] The fifth accused/appellant, a British national, stays with the first accused while on visits to Ghana. It is evident, as the Court of Appeal correctly pointed out, that he has no fixed place of abode in Ghana. The likelihood of flight from the jurisdiction is very real.

[49.] The sixth accused/appellant, a German national, has a legally rented dwelling place in Tema. Even though the premises are rented, unlike the case of the first accused, there appears to be such relative

stability in residence as to qualify it as a fixed place of abode. He is married to a Ghanaian woman, with whom he has two children. However, like the case of the first accused, the mere establishment of a fixed place abode does not dispose of the problem. The likelihood of flight from jurisdiction is real.

[50.] Moreover, in respect of each of the accused/appellants, public interest considerations focused on the societal problems of drug addiction, and the need to abide by the treaty obligations of Ghana in the enforcement of anti-narcotics laws, weigh heavily against the grant of bail. In short, this case is deeply affected with the public interest; and the courts below are entitled to take such factors into consideration in the exercise of their discretionary power under section 19(1) of the Criminal Procedure Code, Act 30.

Decision

[51.] The quashing of the grant of bail by the Court of Appeal in respect of all the accused persons has occasioned no miscarriage of justice. There was no abuse of judicial discretion in its decision to quash the bail outright rather than simply to review or set fresh conditions for the grant of bail. There has been no unreasonable delay in bringing the case to trial; indeed the trial is currently going on. We conclude that there is no need to interfere with the judgment of the Court of Appeal in this case; and we hereby uphold the decision to refuse bail.