



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

COURT (CHAMBER)

**CASE OF GREGORY v. THE UNITED KINGDOM**

*(Application no. 22299/93)*

JUDGMENT

STRASBOURG

25 February 1997

**In the case of Gregory v. the United Kingdom<sup>1</sup>,**

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A<sup>2</sup>, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr Thór VILHJÁLMSSON,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mr I. FOIGHEL,

Sir John FREELAND,

Mr A.B. BAKA,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 29 October 1996 and 25 January 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 2 December 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 22299/93) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) by Mr David Gregory, a British citizen, on 7 July 1993.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed

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<sup>1</sup> The case is numbered 111/1995/617/707. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

<sup>2</sup> Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

a breach by the respondent State of its obligations under Articles 6 and 14 of the Convention (art. 6, art. 14).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 8 February 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr F. Matscher, Mr R. Macdonald, Mr N. Valticos, Mr I. Foighel and Mr A.B. Baka (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently, Mr Bernhardt and Mr Macdonald were prevented from taking part in the consideration of the case and were replaced respectively by Mr Ryssdal as President of the Chamber and by Mr A. Spielmann, first substitute judge.

4. As President of the Chamber at that time (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicant's representative and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 28 June 1996 and the Government's memorial on 2 July 1996. Following enquiries conducted through the Registrar no objection was raised as to making accessible the applicant's submissions in the proceedings before the Commission, dated 24 June 1994 and 10 March 1995. These submissions were subsequently appended to the applicant's memorial.

5. On 13 June 1996 the President of the Chamber at the time, Mr Bernhardt, granted leave to Rights International, a non-governmental human rights organisation based in New York, to submit written comments (Rule 37 para. 2). These were received on 28 August 1996 and forwarded on 3 September 1996 to the Delegate of the Commission, the applicant's representative and the Agent of the Government for comment. No comments were received.

6. In accordance with a decision of the then President of the Chamber, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 October 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Ms S. DICKSON,  
Mr N. GARNHAM,

*Agent,  
Counsel,*

Mr S. BRAMLEY, Mrs B. MOXON, (b) for the Commission	<i>Advisers;</i>
Mr G. RESS, (c) for the applicant	<i>Delegate;</i>
Mr M. MANSFIELD QC, Mr P. HERBERT, Mr E. ABRAHAMSON,	<i>Counsel, Solicitor.</i>
The Court heard addresses by Mr Ress, Mr Mansfield and Mr Garnham.	

## AS TO THE FACTS

### I. PARTICULAR CIRCUMSTANCES OF THE CASE

7. The applicant, who is black, is a British citizen born in 1966 and currently living in Manchester, England.

#### A. The trial

8. The applicant was tried for robbery at Manchester Crown Court between 26 and 28 November 1991. He was legally represented at the trial.

9. On the final day of the trial, at 10.46 a.m., the jury retired to consider their verdict. An hour and three quarters later a note was passed by the jury to the judge. It read:

"JURY SHOWING RACIAL OVERTONES. 1 MEMBER TO BE EXCUSED."

10. In the absence of the jury, the trial judge showed the note to counsel for the prosecution and defence and consulted them on the appropriate response to it.

11. There is some uncertainty as to the stance taken by defence counsel with regard to the follow-up to be given to the note. Prosecution counsel recalls that defence counsel did not raise strong objections to the approach which the judge indicated he intended to pursue, namely to recall the jury and give clear directions on their duty to return a verdict on the basis of the evidence alone. However, defence counsel seems to recall that he did in fact ask the trial judge to discharge the jury in the circumstances, but his application was refused. Defence counsel based his recollection on the grounds of appeal and advice on appeal which he drafted shortly after the trial on 10 December 1991. However, neither of these documents suggests that defence counsel made an express request to the judge to discharge the jury. Under point 4 of his grounds of appeal, defence counsel concluded:

"It is submitted that, in the circumstances aforesaid, some enquiries should have taken place with a view to acceding to the request of the jury that one of their numbers be discharged."

In the accompanying advice on appeal, defence counsel stated:

"It seems to me that it is at least arguable that the trial judge should have enquired further into the matter with a view to acceding to the request that the jury were making."

12. The judge's recollection is that both counsel agreed to his proposed course of action (see paragraph 11 above).

13. The jury were recalled at 12.47 p.m. Pausing at appropriate junctures to ensure that his statement was being understood, the judge redirected the jury in the following terms:

"You are brought here as twelve people from your various walks of life, your various backgrounds. Everybody has preconceived ideas and thoughts but you are brought here from twelve different backgrounds expecting to apply your twelve different minds to the problems that are put before you ... you decide this case according to the evidence and nothing else in the case. Any thoughts or prejudice of one form or another, for or against anybody, must be put out of your minds. You decide this case on evidence. It is the evidence alone which decides the case. Do you understand that, members of the jury? You are the judges and you decide it on the evidence, and weighing the individuals as you saw them and allowing no other factor to influence your decision, but your decision about the quality of the evidence and the way in which a particular individual you are considering, treating them all alike and making no distinction whether a person is a defendant or otherwise, where he lives, where he comes from. Do you understand that? I am certainly not going to discharge any member of the jury because he or she may wish [me] to do so because they dislike certain overtones in the conversation. Decide this case according to the evidence. Members of the jury, I am not saying you should be biased in favour or against it. Look at the way it was given. Decide the case that way and no other. That is your sworn duty. I expect you to abide by your sworn duty."

14. The jury then retired at 12.50 p.m. At 2.21 p.m. the jury, being unable to reach a unanimous verdict, were recalled by the judge. He informed them that the time had come when he could accept a verdict of at least a majority of ten. The jury retired again at 2.24 p.m. At 3.27 p.m. the jury were still undecided and they were called back again. The judge further directed the jury as follows:

"Members of the jury, each of you has taken an oath to reach a true verdict according to the evidence. Remember that is the oath you took two days ago. Not one of you must be false to that oath. You do have a duty, not only as individuals but collectively as a jury. That, of course, is the strength of the jury system. So each of you when you go into your jury room take with you your individual experience and wisdom ... Your task is to pool that experience and wisdom. You must do that by giving your views and listening to the views of other people. Of necessity there will be discussion ... There has got to be argument and there has got to be give and take within the scope of the oath that each of you has taken. That is the way you achieve agreement."

15. At 4.06 p.m. the jury returned and delivered a ten to two majority verdict finding the applicant guilty. The applicant was sentenced to six years' imprisonment.

### **B. The appeal proceedings**

16. The applicant sought leave from the Court of Appeal to appeal against conviction. He submitted that in the circumstances the trial judge had wrongly failed to make any enquiry into the note with a view to determining whether one of the members of the jury should be discharged on the grounds of racial prejudice and that this failure gave rise to a material irregularity at the trial (see paragraph 11 above). Leave to appeal was refused by the single judge on 28 February 1992. He stated that:

"The learned judge dealt with the novel and delicate situation presented by the jury note with tact and sensitivity. It would have been entirely inappropriate for him to have conducted some sort of enquiry. There was no material irregularity at your trial."

17. The applicant renewed his application to the full Court of Appeal. On 19 January 1993 the application was dismissed. The Court of Appeal noted that the trial judge

"... took the view and this Court agrees with it, that the nature of the jury's anxiety was that one member of the jury felt that there was a general overtone of racial comment which was unacceptable and not, as the applicant is suggesting, one member of the jury being so racially prejudiced as to be unable to give proper consideration to the matters before him".

The court continued:

"Matters of this kind raise delicate issues. The jury system does require an element of give and take after proper directions from the judge. In our judgment His Honour Judge Hammond dealt with this matter sensitively, sensibly and correctly, and cannot be faulted for a conclusion that the jury should continue the deliberations which they had given their oath to undertake. We, therefore, find no ground for complaint and we dismiss this application."

## **II. RELEVANT DOMESTIC LAW AND PRACTICE ON JURY TRIALS IN THE CROWN COURT**

### **A. The respective roles of the trial judge and jury**

18. The trial judge is the arbiter of issues of law. He must ensure that the trial is properly conducted according to law. He is required at the end of a trial, *inter alia*, to sum up the evidence, to direct the jury to disregard evidence which is inadmissible, to remind juries of their duties and functions, to explain any law which the jury is required to apply, to direct

the jury on the onus and burden of proof and to ask the jury to reach a verdict on the evidence they have heard.

19. The jury in Crown Court trials consists of twelve members who have taken an oath or affirmed to "faithfully try the defendant and give a true verdict according to the evidence". The jury is the arbiter of fact.

## **B. Jury service**

20. Jury service is regarded as an important civic duty. The Juries Act 1974, as amended, governs qualification for jury service, ineligibility, disqualification, excusal, discharge and other relevant matters.

21. Every person between 18 and 70 who satisfies the requirements set out in section 1 of the Juries Act 1974 is qualified to serve on a jury and liable to do so if summoned under section 2 of that Act. The electoral register serves as the basis of jury selection.

22. Random selection of potential jurors is regarded as a key safeguard against corruption or bias in a sworn jury. There are a number of other guarantees, including:

### *1. Jury checks*

23. It is lawful for enquiries to be made as to whether potential jurors are disqualified by reason of previous convictions. For this purpose a search may be made of criminal records in order to ascertain whether or not a jury panel includes a disqualified person. Furthermore, in cases involving national security or terrorism additional steps may be taken to test the integrity of a potential juror. The Attorney-General has laid down guidelines on the conduct of jury checks.

### *2. Challenges*

24. On the trial of an indictment, and before the jurors are sworn, the accused and the prosecution may object to the jurors who are called to serve. Challenges are of two kinds: (1) "to the array", that is to say to the whole number of persons in the panel, and (2) "to the polls", that is to say to individual jurors.

25. Challenges to the polls must be for cause. The Juries Act 1974 specifies the causes for challenge including the presumed or actual partiality of a potential juror. Any challenge for cause must be decided by the judge before whom the accused is to be tried. The challenging party must provide prima facie evidence of good cause for this purpose. If the challenge for cause is allowed, the juror is ordered to stand down and a fresh juror is called. Challenges for cause are unlimited.

26. The prosecution alone are entitled to require a juror "to stand by" in which case he returns to the panel from which jurors are selected. The

Attorney-General issued Guidelines in November 1988 on the exercise of the prosecution's right to ask jurors to stand by. The Guidelines indicate, *inter alia*, that the right should be asserted only on the basis of clearly defined and restrictive criteria.

### *3. Pre-emptive questioning of the panel of jurors*

27. In certain types of criminal proceedings it is also the practice for the trial judge to put questions to the panel of jurors before the trial begins in order to pre-empt any risk of partiality. This practice is typically used in terrorist cases as well as in cases involving allegations of police misconduct or fraud against companies or government departments. The judge's questions are designed to establish whether, for example, a potential juror is related to or is a close friend of police officers or members of the armed forces, or is employed by the company or government department involved in the criminal proceedings.

### **C. Majority verdicts**

28. Section 17 of the Juries Act 1974 states that the verdict of a jury in proceedings in the Crown Court need not be unanimous if (a) in a case where there are not less than eleven jurors, ten of them agree on the verdict, and (b) in a case where there are ten jurors, nine of them agree on the verdict. The jury must spend at least two hours in deliberations before a majority verdict can be accepted.

### **D. Communications between judge and jury after the retirement of the jury**

29. At any time during their deliberations the jurors may send a note to the trial judge asking for further assistance or clarification. On receipt of a jury note the established practice is for the trial judge to show the note to counsel for the prosecution and defence in the absence of the jury and to invite their submissions on a suitable response. Where a judge receives a note from a jury, including one alleging misconduct or bias within the jury, the following options are available to the judge:

- (a) to give the jury a further direction; or
- (b) to discharge up to three jurors and to allow the trial to continue with the remaining jurors (section 16 of the Juries Act 1974); or
- (c) to discharge the entire jury and order a retrial before a fresh jury, if the judge considers there is a high degree of need for this course of action; or
- (d) to enquire of the jury as a whole whether they are capable of continuing and returning a verdict.

30. Where an application to discharge a juror on the ground of misconduct or bias is made, it is established in English statute law (see paragraph 31 below) and common law that enquiries or investigations should not be made into what is said in the jury room after the jury have retired (*R. v. Orgles* [1994] 1 Weekly Law Reports 108).

### **E. Secrecy of jury deliberations**

31. The rule governing the secrecy of jury deliberations is set out in section 8 (1) of the Contempt of Court Act 1981. Section 8 (1) states that it is a contempt of court to obtain, disclose or solicit any particulars of any statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

### **F. The law on bias**

32. In the case of *R. v. Gough* ([1993] 2 All England Law Reports 724) the House of Lords restated and clarified the law on bias which was applicable at the time of the conviction of the applicant. If the possibility of bias on the part of a juror comes to the attention of the trial judge in the course of a trial, the trial judge should consider whether there is actual bias or not (a subjective test). If this has not been established, the trial judge must then consider whether there is a "real danger of bias affecting the mind of the relevant juror or jurors" (an objective test). In this latter respect Lord Goff, in the *Gough* case, stated as follows:

"... I think it is unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court, in such cases as these personifies the reasonable man; and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time ... I would prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias."

### **G. Race-awareness training initiatives**

33. Section 95 of the Criminal Justice Act 1991 came into force on 31 October 1991. The Secretary of State is obliged under section 95 to publish each year such information as he considers necessary for the purpose of, inter alia, facilitating the performance by persons engaged in the administration of criminal justice of their duty to avoid discriminating against any persons on the ground of race.

34. In March 1991 the Lord Chancellor announced the formation of an Ethnic Minorities Advisory Committee as a sub-committee of the Judicial

Training Board. By 10 November 1993 this sub-committee had initiated its first seminar on ethnic minority issues for members of the senior judiciary. Race-awareness training for full and part-time members of the judiciary began in early 1994 and is the largest single judicial training exercise ever conducted in the United Kingdom.

## PROCEEDINGS BEFORE THE COMMISSION

35. In his application of 7 July 1993 (no. 22299/93) to the Commission, the applicant complained, inter alia, that he had not been given a fair trial by an independent and impartial tribunal contrary to Article 6 of the Convention (art. 6) and that he had been discriminated against on grounds of his race and/or colour contrary to Article 14 (art. 14).

The Commission (First Chamber) declared the application admissible as regards these two complaints on 5 April 1995. In its report of 18 October 1995 (Article 31) (art. 31), it expressed the opinion by eight votes to three that there had been no violation of Article 6 of the Convention (art. 6) and, unanimously, that the applicant's complaint under Article 14 in conjunction with Article 6 (art. 14+6) did not give rise to any separate issue. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment<sup>3</sup>.

## FINAL SUBMISSIONS TO THE COURT

36. As in their memorial, the Government requested the Court to hold that in this case there had been no violation of Article 6 para. 1 of the Convention (art. 6-1) and no violation of Article 14 in conjunction with Article 6 para. 1 (art. 14+6-1).

37. The applicant asked the Court, as in his memorial, to find that there had been a breach of Article 6 para. 1 (art. 6-1) as well as a breach of Article 14 in conjunction with Article 6 para. 1 (art. 14+6-1), and to award him just satisfaction under Article 50 (art. 50).

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<sup>3</sup> Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-I), but a copy of the Commission's report is obtainable from the registry.

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

38. The applicant contended that he was denied a fair trial in breach of Article 6 para. 1 of the Convention (art. 6-1), which, in so far as relevant, states:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law ..."

39. The Government requested the Court to find, like the majority of the Commission, that the facts of the case disclosed no breach of this provision (art. 6-1).

#### **A. The arguments before the Court**

##### *1. The applicant*

40. The applicant accepted that the note passed by the jury to the judge did not amount to proof of actual or subjective bias and that under English law the trial judge could not have enquired into the possible existence of such bias by questioning jurors or the jury as a whole about the nature of the allegations contained in the note. Before the Court he conceded that defence counsel had erred in basing his grounds of appeal on the judge's failure to conduct an enquiry into the note (see paragraph 11 above).

The applicant contended that even in the absence of proof of actual bias the trial judge should in the circumstances have discharged the jury. At the very least he should have asked the jury in open court whether they were capable of continuing and returning a verdict on the evidence. These were the only two safeguards which would have guaranteed the applicant a fair trial. He maintained that the trial judge, who had not been trained in how to deal with race issues, underestimated the seriousness of the allegation in the note (see paragraphs 33 and 34 above). He pointed to what he claimed to be the conclusion of the Court of Appeal, namely that the note clearly indicated that the jury as a whole were displaying racial prejudice and that one juror wished therefore to be discharged from further consideration of the case (see paragraph 17 above). A redirection was an entirely inadequate safeguard to counteract the proven pernicious effects of racism on a jury, and especially in the case at issue since it was given at such a late and crucial stage in the proceedings.

The applicant also asserted that the redirection itself was flawed in many respects. In support of this argument he observed that the judge did not read

out the content of the note nor refer specifically to the issue of racial prejudice. It could not be concluded that the redirection had achieved its aim simply because no further complaints were made. In the first place, the judge had effectively discouraged any renewal of the request; secondly, it was unrealistic to assume that he could satisfy himself that his redirection had worked simply by observing the jury.

### *2. The Government*

41. The Government maintained that the trial judge had properly assessed the situation with the help of counsel. He formed the view that there was no need to discharge the jury and, significantly, defence counsel did not request him to do so. The redirection was detailed and carefully worded, and indicated the judge's concern to ensure that his message was understood and heeded. Having regard to the judge's choice of words it could be reasonably concluded that there was little difference between the redirection and the enquiry which the applicant argued should have been conducted as an alternative to a discharge (see paragraphs 29 and 40 above). Following the redirection there was no further suggestion that any of the jurors was concerned about an element of racial bias. In the circumstances, the judge had offered sufficient guarantees to dispel any legitimate or objectively justified doubts as to the impartiality of the jury.

### *3. The Commission*

42. The Commission agreed with the Government. The note contained a serious allegation, although its meaning was ambiguous. The judge reacted in an appropriate manner in the circumstances and his redirection as formulated was sufficient to exclude any legitimate doubts about the jury's impartiality.

## **B. The Court's assessment**

43. The Court notes at the outset that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see the *Padovani v. Italy* judgment of 26 February 1993, Series A no. 257-B, p. 20, para. 27). To that end it has constantly stressed that a tribunal, including a jury, must be impartial from a subjective as well as an objective point of view (see, among many other authorities, the *Pullar v. the United Kingdom* judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, p. 792, para. 30).

44. The Court observes that it was not disputed that there was no evidence of actual or subjective bias on the part of one or more jurors. It was also accepted by both the applicant and the Government that it was not

possible under English law for the trial judge to question the jurors about the circumstances which gave rise to the note (see paragraphs 30 and 31 above). The Court acknowledges that the rule governing the secrecy of jury deliberations is a crucial and legitimate feature of English trial law which serves to reinforce the jury's role as the ultimate arbiter of fact and to guarantee open and frank deliberations among jurors on the evidence which they have heard.

Furthermore, the members of the jury were committed by oath or affirmation to faithfully try the applicant and to give a true verdict according to the evidence (see paragraph 19 above).

45. It follows therefore that the Court must examine whether in the circumstances there were sufficient guarantees to exclude any objectively justified or legitimate doubts as to the impartiality of the jury bearing in mind that the standpoint of the accused, although important, cannot be decisive for its determination (see the *Remli v. France* judgment of 23 April 1996, Reports 1996-II, p. 574, para. 46).

46. As regards the situation which arose at the trial, the Court in applying the objective test to the facts in issue must have particular regard to the steps taken by the trial judge on receipt of the note from the jury. His immediate reaction was to seek the views of both prosecution and defence counsel and not to dismiss the allegation outright (see paragraph 10 above). As an experienced judge who had observed the jury throughout the trial, he was no doubt aware of the possibility of either discharging the jury at that stage or asking the jury in open court whether they were capable of continuing and returning a verdict on the evidence alone. He chose neither of these courses of action, and it is significant that defence counsel did not in fact press for them (see paragraph 11 above). It may be reasonably inferred that defence counsel himself did not consider that either was warranted in the circumstances. At the most defence counsel would appear to have asked the judge to investigate the circumstances which motivated the writing of the note. However, such an investigation would not have been possible under English law (see paragraphs 30 and 31 above).

47. The trial judge chose to deal with the allegation by means of a firmly worded redirection to the jury having had the benefit of submissions from both counsel. His statement was clear, detailed and forceful. He was anxious to ensure that his words were understood, and he deliberately broke off on occasions to satisfy himself that such was the case. He sought to impress on the jury that their sworn duty was to try the case on the evidence alone and that they must not allow any other factor to influence their decision.

Admittedly the judge did not make any reference in his direction to the words "racial prejudice". However, it is to be noted that he instructed the jury to put out of their minds "any thoughts or prejudice of one form or another". The meaning of such words must have been clear, in particular to

any juror whose conduct may have given rise to the allegation of racial overtones. It is significant that on no subsequent occasion was there any further suggestion of racial comment. The judge could reasonably consider therefore that the jury had complied with the terms of his redirection and that any risk of prejudice had been effectively neutralised.

48. The Court's assessment of the facts leads it to conclude therefore that, in the instant case, no more was required under Article 6 (art. 6) to dispel any objectively held fears or misgivings about the impartiality of the jury than was done by the judge. While the guarantee of a fair trial may in certain circumstances require a judge to discharge a jury it must also be acknowledged that this may not always be the only means to achieve this aim. In circumstances such as those in issue, other safeguards, including a carefully worded redirection to the jury, may be sufficient. The Court considers that it is confirmed in this conclusion by the view taken of the judge's handling of the note by the judges on appeal in application of legal principles which corresponded closely to its own case-law on the objective requirements of impartiality (see paragraphs 16, 17 and 32 above).

49. The Court further observes that the facts in issue are to be distinguished from those which led it to find a violation in the above-mentioned Remli case (see paragraph 45 above). In that case, the trial judges failed to react to an allegation that an identifiable juror had been overheard to say that he was a racist. In the present case, the judge was faced with an allegation of jury racism which, although vague and imprecise, could not be said to be devoid of substance. In the circumstances, he took sufficient steps to check that the court was established as an impartial tribunal within the meaning of Article 6 para. 1 of the Convention (art. 6-1) and he offered sufficient guarantees to dispel any doubts in this regard.

50. The Court concludes therefore that there has been no violation of Article 6 para. 1 (art. 6-1) in the circumstances of the case.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 (art. 14+6)

51. The applicant also asserted that the trial judge and the judges on appeal treated the issue of racial bias less seriously than they would have treated any other form of bias and this fact gave rise to a breach of Article 14 taken in conjunction with Article 6 of the Convention (art. 14+6).

Article 14 of the Convention (art. 14) provides as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

52. In support of his assertion, the applicant referred in his memorial to his submissions in support of his Article 6 complaint (art. 6), including the failure of the judge to discharge the jury or to conduct an enquiry as well as the inadequacy of his direction which did not make any express mention of racial prejudice. The applicant also alluded in his memorial to cases where English courts had ordered juries to be discharged for less serious allegations of bias.

53. The Government shared the Commission's conclusion that there was no evidence that the trial judge treated the issue of racial bias less seriously than he would have treated other forms of bias.

54. The Court, like the Commission, is of the opinion that the applicant's complaint under Article 14 (art. 14) does not give rise to any separate issue.

The Court concludes therefore that there has been no violation under this head (art. 14).

#### FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been no violation of Article 6 para. 1 of the Convention (art. 6-1);
2. Holds unanimously that there has been no violation of Article 14 of the Convention in conjunction with Article 6 of the Convention (art. 14+6).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 February 1997.

Rolv RYSSDAL  
President

Herbert PETZOLD  
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 53 para. 2 of Rules of Court A, the dissenting opinion of Mr Foighel is annexed to this judgment.

R. R.  
H. P.



## DISSENTING OPINION OF JUDGE FOIGHEL

I agree with the statement of the majority of my colleagues set out in paragraph 43 of the judgment, which reads: "The Court notes at the outset that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused."

The question therefore is whether in the circumstances of the case in issue sufficient guarantees or remedies existed to exclude any objectively justified or legitimate doubts as to the impartiality of the jury which tried the applicant.

I share the view of the minority of the Commission who concluded that: "... the issue to which the jury note referred [was] a serious one and [we] consider the ambiguity of the jury note central to the question of objective impartiality in this case. It is possible that the note could have been evidence of the over-sensitivity of a juror to comments made by fellow jurors. However, it could equally be interpreted as referring to racist comments expressed by one, more or indeed all of the members of the jury."

If a legal system designates a jury as the ultimate arbiter of the facts of a case, it seems to me important to note that the members of that jury enter the courtroom with no training or awareness of the issues which may confront them in the course of the trial, including the issue of jury racism. The members of the jury are given no advance warning on how they are to address an unexpected occurrence of racism within the jury. Their only point of reference is their own personal experience in their daily lives. This leads me to stress that it is of the utmost importance that remedies should be in place to enable a trial judge to ensure that the decision of the jury is not tainted with any objective suspicion of bias. This is especially true when, as in the instant case, the suspicion of bias is brought directly to the attention of the judge.

I take the view that a speech from a judge – a redirection – cannot dispel racial prejudice within a jury, if such prejudice exists. The only safeguard which could have been offered by the trial judge in this case was to discharge part or the whole of the jury, or at least to have conducted a more probing enquiry into the effect of the note on the jury's deliberations and decision-making by asking the jury in open court whether they were still capable of continuing and returning a verdict in the circumstances. The jury's answer to that question would have enabled the judge either to exercise his powers of discharge or to cede himself that the note was inconsequential. He took none of these courses of action and no other effective means were available since domestic law prevented the trial judge from questioning the jury members about the origin and nature of the note.

It is of the utmost importance to stress that it is not for this Court to decide whether the trial judge acted reasonably in accordance with domestic

law. The Court's task is to decide whether the proceedings taken as a whole meet the requirements of the Convention and especially Article 6 para. 1 (art. 6-1).

I do not find that the proceedings in this case were such as to secure for the applicant an impartial tribunal as guaranteed by Article 6 para. 1 (art. 6-1). I therefore find a violation (art. 6-1) in this case.