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

THIRD SECTION

CASE OF SANDER v. THE UNITED KINGDOM

(Application no. 34129/96)

JUDGMENT

STRASBOURG

9 May 2000

FINAL

09/08/2000

In the case of Sander v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mr W. FUHRMANN,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 29 June 1999, 28 March and 6 April 2000,

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

PROCEDURE

1. The case originated in an application (no. 34129/96) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Mr Kudlip S. Sander ("the applicant"), on 22 July 1996.

2. The applicant was represented by Mr G. Henson, a barrister practising in London. The Government of the United Kingdom ("the Government") were represented by their Agent, Ms S. Langrish, of the Foreign and Commonwealth Office.

3. The applicant complained that his case had not been heard by an impartial tribunal because, allegedly, the jury had been racially prejudiced.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

6. By a decision of 29 June 1999, the Chamber declared the application partly admissible[1].

7. The applicant and the Government each filed written observations on the merits (Rule 59 § 1).

1. *Note by the Registry*. The Court's decision is obtainable from the Registry.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

8. In March 1995 the applicant, an Asian, appeared together with J.B. and G.C. before the Birmingham Crown Court, composed of a judge and a jury, to be tried for conspiracy to defraud.

9. After the defence had stated its case, the judge started his summing-up, which he had almost completed by Friday evening when he adjourned.

10. On Monday morning a juror arrived at the court and handed an envelope to the court usher containing the following complaint:

> "I have decided I cannot remain silent any longer. For some time during the trial I have been concerned that fellow jurors are not taking their duties seriously. At least two have been making openly racist remarks and jokes and I fear are going to convict the defendants not on the evidence but because they are Asian. My concern is the defendants will not therefore receive a fair verdict. Please could you advise me what I can do in this situation."

11. The juror who had written the complaint was asked not to join the other jurors. The judge discussed the complaint with counsel in chambers and then adjourned and listened to submissions in open court. The defence asked the judge to dismiss the jury on the ground that there was a real danger of bias. The judge, however, decided to call the jury back into court, at which stage the juror who had written the complaint joined the others. The judge read out the complaint to them and told them the following:

> "Members of the jury, this morning I received a note from one of your number expressing extreme concern that some of your number are not taking your duties seriously, are making openly racist remarks and jokes about Asians and may not reach your verdicts upon the evidence but because of some racial prejudice.
>
> I am not able to conduct an inquiry into the validity of those contentions and I do not propose to do so. This case has cost an enormous amount of money and I am not anxious to halt it at the moment, but I shall have no compunction in doing so if the situation demands.
>
> When you took the oath or affirmed as jurors it was, you will remember, to bring in true verdicts according to the evidence. That is solemn and binding and means what it says.
>
> I am going to adjourn now and I am going to ask you all to search your conscience overnight and if you feel that you are not able to try this case solely on the evidence and find that you cannot put aside any prejudices you may have will you please indicate that fact by writing a personal note to that effect and giving it to the jury bailiff on your arrival at court tomorrow morning. I will then review the position. Thank you very much."

12. The next morning the judge received two letters from the jury. The first letter, which was signed by all the jurors including the juror who had sent the complaint, stated the following:

> "We, the undersigned members of the jury, wish to put on record to the Court our response to yesterday's note from a juror implying possible racial bias.
>
> 1. We utterly refute the allegation.
>
> 2. We are deeply offended by the allegation.
>
> 3. We assure the Court that we intend to reach a verdict solely according to the evidence and without racial bias."

13. The second letter, which the judge commended, was written by a juror who appeared to have thought himself to have been the one who had been making the jokes. The juror in question explained at length that he might have done so, that he was sorry if he had given any offence, that he was somebody who had many connections with people from ethnic minorities and that he was in no way racially biased.

14. The judge decided that he would not discharge the jury and told them the following:

> "Ladies and gentlemen, the events of yesterday afternoon were clearly distressing for you, but I am sure you will see and realise that when a judge receives a note from one of your number raising those sort of issues it is the judge's duty to bring it to the attention of the whole jury.
>
> Whether the suggestions were well or ill-founded is not something I or any judge can decide, nor is it something that can be investigated by the judge. It would be an improper activity. I took the course I did in the exercise of my discretion and I am sorry you were offended and upset.
>
> However, all twelve of you have this morning utterly refuted the allegation, expressed your deep offence at it and assured the Court that you intend to reach a verdict or verdicts solely according to the evidence and without racial bias. One of your number has also written at length a most cogent and balanced letter, and it is quite clear to me that each and every one of you are conscious of the oath or affirmation that you have taken and are dutifully prepared to abide by."

15. On 8 March 1995 the jury found the applicant guilty, but acquitted G.C., who was also Asian. On 20 April 1995 the judge imposed on the applicant a sentence of five years' imprisonment.

16. The applicant was given leave to appeal against conviction. In his appeal he raised, *inter alia*, the following ground: The judge should have reacted to the juror's complaint by dismissing the jury; in any event, the juror who had written the complaint should not have been segregated from the other members of the jury in the early stages and the judge should not have disclosed to the jurors the contents of the complaint.

17. On 1 March 1996 the Court of Appeal dismissed the applicant's appeal. As regards the above-mentioned ground it considered the following: The court had regard to the letter signed by all the members of the jury, and the letter of the juror who was probably responsible for the remarks that had given offence, and found that the trial judge did not err in reaching the conclusion that there was no real risk of bias. Moreover, the judge was right to confront the jury with the problem and ask them to consider it. It was perhaps unfortunate that the juror who had written the complaint was for a time segregated from the other members of the jury, as this led to his identification. However, it would be unrealistic to suppose that the jury would not have wanted to know who the author of the complaint was and the judge dealt with the possibility of tensions among the jurors perfectly sensibly in the direction he gave to them.

THE LAW

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

18. The applicant complained that he was not tried by an impartial tribunal, contrary to Article 6 § 1 of the Convention, which provides:

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

19. The applicant submitted that his case was different from Gregory v. the United Kingdom in which the Court did not find a violation of Article 6 § 1 of the Convention (judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I). The other jurors knew who the complaining juror was. Obviously the latter was forced to withdraw his complaint. The disclosure of his identity must have prejudiced his position and inhibited him in the further discussion of the case. Moreover, one juror admitted to making racist remarks. The other juror about whom the complaint had been made remained silent. These developments should have alerted the judge to the fact that there was something fundamentally wrong with the jury and the judge should have discharged them. The judge did not react in this manner and, as a result, there was a violation of Article 6 § 1 of the Convention. The fact that the same jury acquitted G.C., who was also Asian, was irrelevant because the case against him was completely different. There was practically no evidence against him.

20. The Government submitted that the facts of the applicant's case were very similar to those in the Gregory case cited above. In both cases the judge received a note alleging racial bias. The judge addressed the jury in accordance with domestic case-law and practice. Both applicants' appeals

were dismissed by the Court of Appeal, which applied principles similar to those under Article 6 § 1 of the Convention. Although it was not expressly stated, the applicant's case appeared to be, as in the Gregory case, one of alleged objective bias. In both cases there existed a number of factors such as to dispel any doubts as to the impartiality of the jury. The judge redirected the jury in a clear, detailed and forceful manner. There were no other suggestions of racial comments in the trial. The other verdicts of the jury did not show any racial bias. The judge had ample time to evaluate the jurors. Moreover, in the present case the judge adjourned the proceedings after addressing the jurors and sought and received an unequivocally positive assurance from them as to their impartiality. The judge also made it absolutely clear that he would have no compunction about discharging the jury and halting the trial if necessary. Given all the above, the Government submitted that there had been no violation of Article 6 § 1 of the Convention.

21. The Government also submitted that the Court should not engage in speculation as to how the jurors behaved following the action taken by the judge. The judge was best placed to assess whether each member of the jury would return a verdict solely on the basis of the evidence. Moreover, the judge's assessment was thoroughly reviewed by the Court of Appeal. According to the case-law of the Convention, misgivings on the part of the applicant were not enough to establish objective impartiality. The applicant's fear must be objectively justified. The fact that the jury acquitted an Asian co-defendant was a relevant consideration under the same case-law.

22. The Court recalls 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. 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 the Gregory judgment cited above, p. 308, § 43).

23. The Court also recalls that the present case concerns clear and precise allegations that racist comments had been made by jurors called upon to try an Asian accused. The Court considers this to be a very serious matter given that, in today's multicultural European societies, the eradication of racism has become a common priority goal for all Contracting States (see, *inter alia*, Declarations of the Vienna and Strasbourg Summits of the Council of Europe).

24. The Court notes that the allegations in question led the applicant to the conclusion that he was tried by a racially prejudiced jury. The applicant's complaint is, therefore, that there was subjective bias on the part of some jurors.

25. The Court recalls that the personal impartiality of a judge must be presumed until there is proof to the contrary (see the Piersack v. Belgium

judgment of 1 October 1982, Series A no. 53, pp. 14-15, § 30). The same holds true in respect of jurors.

26. In the circumstances of the applicant's case, a member of the jury submitted a note alleging that two fellow jurors "[had] been making openly racist remarks and jokes" and stating that he feared that "they [were] going to convict the defendants not on the evidence but because they were Asian". Another juror, being confronted with these allegations, accepted that "he might have done so" and stated that "he was sorry if he had given any offence". The Court, therefore, considers that it was established that at least one juror had made comments that could be understood as jokes about Asians. In the Court's view, this does not on its own amount to evidence that the juror in question was actually biased against the applicant. Moreover, the Court notes that it was not possible for the trial judge to question the jurors about the true nature of these comments and the exact context in which they had been made. It follows that it has not been established that the court that tried the applicant was lacking in impartiality from a subjective point of view.

27. This is not, however, the end of the Court's examination of the applicant's complaint. The Court must also examine whether the court was impartial from an objective point of view, that is, whether in the circumstances there were sufficient guarantees to exclude any objectively justified or legitimate doubts as to the impartiality of the court. Although the standpoint of the accused is important in this connection, it cannot be decisive (see the Gregory judgment cited above, p. 309, § 45).

28. The Government submitted that such guarantees existed. They referred in principle to the redirection of the jury by the judge and to the unequivocally positive assurance of impartiality that the judge sought and received from the jurors.

29. As regards the latter, the Court recalls that, the morning after the submission of the note about the racist jokes, all the jurors signed a letter to the effect that the allegations in question were unfounded. However, the Court considers that this letter cannot on its own discredit the allegations contained in the original note, for the following reasons.

First, one of the jurors wrote a separate letter indirectly admitting that he had been making racist jokes. The Court considers that this is a matter that cannot be taken lightly since jokes of this nature, when made by jurors in the context of judicial proceedings, take on a different hue and assume a different significance from jokes made in the context of a more intimate and informal atmosphere.

Secondly, the collective letter was also signed by the juror who had submitted the note. In the Court's view, this in itself casts some doubt on the credibility of the letter. The note, which was the product of a genuine, spontaneous reaction, the honesty of which has not been questioned, expressed fear that the defendants could be convicted because they were

Asian. The letter, which reflected the common position of a number of persons with not necessarily the same interests in mind, denied any possible racial bias. The two cannot be reconciled and the Court considers the note more reliable. In addition, the Court notes that the juror who had submitted the note had been treated in such a way that it had become obvious to the other jurors that he was the one who had made the allegations. It is obvious that this must have compromised his position *vis-à-vis* his fellow jurors.

Thirdly, the Court considers that the collective letter does not discredit the allegations contained in the original note because openly admitting to racism is something which the average person would have a natural tendency to avoid. *A fortiori*, an open admission of racism cannot be easily expected from a person in jury service, the latter being generally regarded an important civic duty.

Given all the above, the Court finds that the collective denial of the allegations contained in the note could not in itself provide a satisfactory solution to the problem.

30. Moreover, in the present case the Court is not prepared to attach very much weight to the judge's redirection of the jury. The Court considers that, generally speaking, an admonition or direction by a judge, however clear, detailed and forceful, would not change racist views overnight. Although in the present case it cannot be assumed that such views were indeed held by one or more jurors, it has been established that at least one juror had been making racist comments. In these circumstances, the Court considers that the direction given by the judge to the jury could not dispel the reasonable impression and fear of a lack of impartiality, which were based on the original note.

31. As for the rest, the Court is not prepared to attach much weight to the fact that the judge had direct contact with the jurors either. The Court has already noted that, under domestic law, the judge could not question the jurors on the allegations contained in the note. Nor can G.C.'s acquittal be of decisive importance, since there is nothing to indicate that the two cases were comparable. Finally, the fact that the Court of Appeal rejected the applicant's appeal applying principles that corresponded to the Convention case-law can offer only limited assistance to the Court in the present case.

32. The Court, therefore, considers that the allegations contained in the note were capable of causing the applicant and any objective observer legitimate doubts as to the impartiality of the court, which neither the collective letter nor the redirection of the jury by the judge could have dispelled.

33. In this connection, the Court observes that the facts of the applicant's case can be distinguished from the Gregory case cited above, in which the Court found no violation of the Convention. In the latter case there was no admission by a juror that he had made racist comments, in the form of a joke or otherwise; there was no indication as to who had made the

complaint and the complaint was vague and imprecise. Moreover, as opposed to the Gregory case, in the present case the applicant's counsel insisted throughout the proceedings that dismissing the jury was the only viable course of action.

34. The Court has accepted that, although discharging the jury may not always be the only means to achieve a fair trial, there are certain circumstances where this is required by Article 6 § 1 of the Convention (see the Gregory judgment cited above, p. 310, § 48). In the present case the judge was faced with a serious allegation that the applicant risked being condemned because of his ethnic origin. Moreover, one of the jurors indirectly admitted to making racist comments. Given the importance attached by all Contracting States to the need to combat racism (see paragraph 23 above), the Court considers that the judge should have reacted in a more robust manner than merely seeking vague assurances that the jurors could set aside their prejudices and try the case solely on the evidence. By failing to do so, the judge did not provide sufficient guarantees to exclude any objectively justified or legitimate doubts as to the impartiality of the court. It follows that the court that condemned the applicant was not impartial from an objective point of view.

35. There has, therefore, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. Article 41 of the Convention provides:

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

A. Damage

37. The applicant claimed 458,000 pounds sterling in respect of the earnings he lost and the property he had to sell during his imprisonment. He also considered that he should be compensated for the future loss of earnings resulting from the damage to his reputation caused by his conviction and for his divorce. Finally, he demanded compensation for the three years he spent in prison.

38. The Government have not made any comments on the applicant's claims.

39. The Court considers that no causal link has been established between the violation found and the claimed damage. It therefore dismisses the claim.

B. Costs and expenses

40. The Court notes that the applicant has not made any claim for costs and expenses.

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been a violation of Article 6 § 1 of the Convention;

2. *Dismisses* unanimously the applicant's claims for just satisfaction.

Done in English, and notified in writing on 9 May 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ — Registrar
J.-P. COSTA — President

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

(a) partly concurring, partly dissenting opinion of Mr Loucaides;

(b) dissenting opinion of Sir Nicolas Bratza joined by Mr Costa and Mr Fuhrmann.

J.-P.C.
S.D.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES

While I am in agreement with the majority that there has been a violation of Article 6 § 1 of the Convention in that the court which condemned the applicant was not impartial from an objective point of view, I disagree that it has not also been established that the same court was lacking in impartiality from a subjective point of view.

I believe that there is sufficient proof in this case to rebut the presumption that the court was impartial. This proof consists of the evidence that at least one of the jurors admitted that he was making openly racist jokes and comments in respect of the accused, who was an Asian. It is true that the judge tried to neutralise the danger emerging from such an incident but, as rightly observed in the decision of the majority, "an admonition or direction by a judge, however clear, detailed and forceful, would not change racist views overnight" (paragraph 30 of the judgment).

I am convinced that a juror who, in the context of carrying out his duties, makes racist jokes or comments in respect of the accused cannot reasonably be impartial as regards the trial of the latter. Evidently such attitude implies that the juror considers the accused an inferior person because of his race. As a result of such prejudice the accused could not have received an impartial treatment by one of the persons who, together with the other jurors, condemned him. Consequently the applicant was not tried by an impartial tribunal as required by Article 6 § 1 of the Convention.

DISSENTING OPINION OF JUDGE Sir Nicolas BRATZA JOINED BY JUDGES COSTA AND FUHRMANN

I regret that I am unable to agree with the majority of the Court that there has been a violation of Article 6 § 1 of the Convention in the present case.

The starting-point for the Court's examination of the issues raised would seem to me to be the case of Gregory v. the United Kingdom (judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I), the facts of which bear a strong similarity to those in the present case. As here, the trial judge in the Gregory case received a note from a juror expressing concern about indications of racial prejudice in the jury; as here, the judge consulted counsel on both sides before deciding not to discharge the jury or to conduct an inquiry into the validity of the complaint, but to give the jury a further direction reminding them of their oath or affirmation as jurors to bring in true verdicts according to the evidence in the case; as here, the applicant's appeal against conviction on the grounds, *inter alia*, that the trial judge had dealt inappropriately with the situation to which the note had given rise was dismissed by the Court of Appeal, that court holding that the judge had handled the matter sensitively, sensibly and correctly.

The Court in the Gregory case concluded that there had been no violation of Article 6 § 1, either on the grounds of actual or subjective bias on the part of one or more of the jurors or on the grounds of objectively justified and legitimate doubts as to the impartiality of the jury.

As to the former ground, the Court noted that it was not disputed that there was no evidence of actual or subjective bias, it being accepted 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. The Court acknowledged that the rule governing the secrecy of jury deliberations was 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". (ibid., p. 309, § 44)

The Court further noted that the jury were committed by their oath or affirmation to give a true verdict according to the evidence.

As to the allegation that the jury were biased from an objective standpoint, the Court noted that the immediate reaction of the trial judge was not to dismiss the allegation outright but instead to take the view of counsel: as an experienced judge, who had observed the jury throughout the trial, he chose not to discharge the jury or to ask whether they were capable of continuing and returning a verdict on the evidence alone, but rather to deal with the allegation by means of a firmly worded redirection to the jury, in clear, detailed and forceful terms. In the view of the Court, the meaning of his words must have been clear to any juror whose conduct may have

given rise to the allegation of racial overtones and, since there was no further suggestion of racial comment, the trial judge

> "... could reasonably consider that ... the jury had complied with the terms of his redirection and that any risk of prejudice had been effectively neutralised". (ibid., pp. 309-10, § 47)

The Court considered that, in these circumstances, no more was required under Article 6 to dispel any objectively held fears and 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 ..." (ibid., p. 310, § 48)

The majority of the Court in the present case have, correctly in my view, rejected the complaint that the jury lacked impartiality from a subjective standpoint. As in the Gregory case, it was not possible for the trial judge to inquire into the precise nature of the comments made or the exact context in which they had been made. Nor is such information available to the Court. In the absence of such information, the fact that a juror made comments that could be understood as jokes about Asians cannot of itself amount to evidence that the particular juror was actually biased against the applicant; still less can it amount to evidence establishing actual bias on the part of the jury as a whole.

However, in contrast to the decision of the Court in the Gregory case, the majority have concluded that the fact that a juror made racist jokes in the present case gave rise to justified and legitimate doubts as to the impartiality of the trial court and that sufficient guarantees did not exist to exclude or dispel these doubts.

I cannot agree. While I readily accept that the making of racial jokes is unacceptable in any circumstances, and particularly in the context of a jury trial, such comments as may have been made cannot in my view be seen in isolation and without regard to the steps subsequently taken by the trial judge to dispel any risk of bias.

The majority of the Court attach little weight to the letter signed by each member of the jury, or to the judge's redirection of the jury on two occasions or to the fact that the judge had direct contact with the members of the jury and thus was arguably in a better position to assess what measures were called for.

I do not share this view. The collective letter was written in response to an express reminder to the jury of their oath or affirmation as jurors and to the instructions by the trial judge that they were to indicate if, after

reflection, they felt they were unable to try the case solely on the evidence or to put aside any prejudices they might have. The letter contained an explicit assurance that the jury intended to reach a verdict solely according to the evidence and without racial bias, thus responding both to the fears and concerns expressed in the note and to the judge's admonition.

Unlike the majority, I find no inconsistency between the note and the letter. Nor can I accept that the reliability or credibility of the letter is undermined by the fact that it was signed by the juror who had written the note. There is no evidence to suggest that the fact that his identity must have been known to the other jurors might have compromised his position or subjected him to pressure to drop his allegations. His signing of the letter seems to me to be at least equally consistent with his acknowledgment that his fears and concerns that certain jurors would reach a verdict on a racial basis were dispelled. That this was the true position seems to me to be borne out by the fact that the jury acquitted one of the applicant's co-defendants, a matter to which I, like the Court of Appeal, attach some, if not decisive, importance.

Again, unlike the majority of the Court, I place considerable weight on the fact that a highly experienced trial judge, having presided over the trial for several days and having been able to observe the jurors as the trial progressed, considered that it was inappropriate to discharge the jury immediately on receiving the note but chose rather to resolve the matter by giving a firm direction and admonition to the jury. I attach weight, also, to the fact that having reviewed the position, as he indicated he would, in the light of the collective letter and separate letter from one juror, he took the view that the case could be safely left to the jury without any danger of bias causing injustice to the defendants – a view which was fully endorsed by the Court of Appeal.

The majority of the Court, while acknowledging that their conclusion is at variance with that of the Court in the Gregory case, seek to distinguish the two cases on their facts. Two such grounds of distinction are suggested. In the first place, it is pointed out that the complaint of bias in the Gregory case was vague and imprecise while, in the present case, there was an admission by a juror that he might have made racist jokes. While this is true, it is not to my mind a material point of distinction, the important question in each case being whether sufficient steps were taken to dispel any objectively justified fears that a verdict would be reached on grounds of racial prejudice. Secondly, it is said that in the present case, unlike in Gregory, the applicant's counsel insisted throughout the proceedings that the discharge of the jury was the only proper course. I do not find this point compelling either. It was certainly the recollection of defence counsel in the Gregory case that he had asked the judge to discharge the jury. More importantly, the fact that the trial judge, having consulted counsel for all parties, did not accept the view of the defence but chose a different course

does not mean that a fair trial was not guaranteed. As the Court noted in its Gregory judgment, safeguards other than the discharge of a jury, including a carefully worded redirection to the jury, may be sufficient. In my view, it was sufficient in the present case.

In conclusion, I fully endorse the importance to be attached to the need to combat racism. What I cannot accept is that this consideration should have caused the trial judge in the present case to have reacted "in a more robust manner" or that only the discharge of the jury could have satisfied the requirements of Article 6 § 1.