



## Court rejects complaints concerning unfairness of procedure leading to dismissal of jury and trial before judge sitting alone

In its decision in the cases of [Twomey and Cameron v. the United Kingdom](#) (application no. 67318/09) and [Guthrie v. the United Kingdom](#) (application no. 22226/12), the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The Court emphasised that the system of trial by jury was just one example among others of the variety of legal systems existing in Europe, which it was not the Court's task to standardise. The right to a fair trial did not, therefore, require that the determination of guilt be made by a jury. In connection with the applicants' principal complaint, that the decision to dismiss the jury was taken on the basis of evidence of jury tampering which was not fully disclosed to the defence, the Court found that the procedure afforded the defence sufficient safeguards, taking into account, on one hand, the important public interest grounds against disclosing the evidence and, on the other hand, the fact that all that was to be determined was whether the trial should continue before a judge sitting alone or a judge sitting with a jury, two forms of trial which were in principle equally acceptable under the Convention..

### Principal facts

The first and second applicants, John Anthony Twomey and Glenn MacDonald Cameron, are an Irish and a British national who were born in 1948 and 1959 and live in March and Cambridgeshire, respectively. The third applicant, Bianca Guthrie, is a British national who was born in 1975 and lives in London.

Mr Twomey and Mr Cameron were both charged with an armed robbery committed at a warehouse near Heathrow Airport. At some point during the trial, the prosecution informed the judge that they were in possession of material showing that improper approaches were being made to some members of the jury in order to affect the deliberations. This material was not disclosed to the defence. Under the 2003 Criminal Justice Act (the 2003 Act), the judge subsequently discharged the jury as he considered that there had been a serious attempt to subvert the process of trial by jury. He also found that there was a real danger of the same thing happening again and submitted the question whether the next trial should proceed before a judge sitting alone.

Although the High Court Judge found that it would be possible to conduct the retrial with a jury, the Court of Appeal decided against it. The newly appointed judge subsequently sentenced Mr Twomey to 20 years and six months' imprisonment and Mr Cameron to 15 years' imprisonment. In November 2010, the Court of Appeal rejected the applicants' argument that they were entitled to disclosure of the evidence of jury tampering, which had formed the basis for the decision to proceed to retrial with a judge sitting alone. Finally, in October 2011, the Court of Appeal refused to certify a point of law, preventing the applicants from applying to the Supreme Court.

Bianca Guthrie, together with her sister CG and other defendants, stood trial between February and March 2011 on charges of fraudulent applications for housing and council tax benefits. In March 2011, one of the jurors complained that she had been approached and asked for her telephone number by CG while waiting outside the house court. Subsequently, Ms Guthrie's brother made an application for the jury to be discharged on the grounds that there were likely to perceive CG's approach as an attempt to

improperly influence them. The judge rejected the application, relying on the jurors' firm assertions that they would be able to remain impartial.

However, further allegations were made that a former companion of CG had been in contact with a member of the jury. Therefore, under the 2003 Act, the judge discharged the jury and made an order for the trial to continue before her sitting alone. Although she had examined undisclosed material relating to allegations of jury tampering, the judge did not consider that there was a risk of bias if she were to continue with the trial. In July 2011, the Court of Appeal upheld her ruling. The judge subsequently convicted the defendants of all charges against them. Two months later, the Supreme Court refused leave to appeal against the interlocutory judgment of the Court of Appeal.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 3 December 2009.

All the applicants' complaints were made under Article 6 (right to a fair trial). Their principal complaint was that the reliance of the judge on undisclosed material showing evidence of jury tampering had deprived them of a fair hearing to determine whether the trial should continue before a judge sitting alone.

The decision was given by a Chamber of seven, composed as follows:

Ineta **Ziemele** (Latvia), *President*,  
David Thór **Björgvinsson** (Iceland),  
Päivi **Hirvelä** (Finland),  
Ledi **Bianku** (Albania),  
Vincent A. **de Gaetano** (Malta),  
Paul **Mahoney** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina), *Judges*,

and also Françoise **Elens-Passos**, *Section Registrar*.

## Decision of the Court

### Article 6§1

The Court reiterated that, although there was no right under Article 6 § 1 to be tried before a jury, the right to an adversarial trial meant that the defence must be given the opportunity to have knowledge of and comment on the evidence provided by the other party. However, it pointed out that entitlement to disclosure of relevant evidence was not an absolute right and must be weighed against other competing interests. Indeed, some cases required certain evidence to be withheld from the defence in order to safeguard an important public interest. In such cases, the Court had to assess the decision-making procedure to ensure that it complied with the Convention requirement of adversarial proceedings and incorporated adequate safeguards to protect the interests of the accused.

In both cases, the undisclosed material had not determined the applicants' guilt or innocence but had had a bearing on the separate issue of whether they had attempted to contact members of the jury in order to affect the deliberations. Therefore, the undisclosed material had been relied on by the prosecution only in relation to the procedural question of whether the jury should be discharged and the trial was to proceed before a judge sitting alone.

At the trial of Mr Twomey and Mr Cameron, the judge had informed the parties of his intention to discharge the jury and had decided on public interest grounds not to disclose the material showing evidence of jury tampering. Although the lack of disclosure and the absence of any statement indicating the nature of the allegations had prevented the applicants from challenging them, they had been given the opportunity to make representations as to whether it would cause unfairness if the jury were discharged and the trial continue, both before the High Court and the Court of Appeal..

At Ms Guthrie's trial, she and the other defendants had been provided with a gist of the evidence relating to jury tampering and given the opportunity to make submissions. Furthermore, that issue had been the subject of an interlocutory appeal, where the applicant had been able to make submissions.

In each case the procedure afforded the defence sufficient safeguards, taking into account, on one hand, the important public interest grounds against disclosing the relevant evidence to the defence and, on the other hand, the fact that all that was to be determined was whether the trial should continue before a judge sitting alone or a judge sitting with a jury, two forms of trial which were in principle equally acceptable under Article 6.

It followed that the applications had to be rejected as manifestly ill-founded under Article 35 (admissibility criteria).

*The decision is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.