



Adverse media coverage did not prejudice the outcome of proceedings against a suspect in a terrorist plot to cause explosions on aircraft

In today's **Chamber** judgment¹ in the case of [Abdulla Ali v. the United Kingdom](#) (application no. 30971/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned Mr Ali's complaint that, because of extensive adverse media coverage, the criminal proceedings against him for conspiring in a terrorist plot to cause explosions on aircraft using liquid bombs had been unfair.

Following a first trial in Mr Ali's case which had resulted in his conviction on a charge of conspiracy to murder, there had been extensive media coverage, including reporting on material which had never been put before the jury. A retrial was subsequently ordered in respect of the more specific charge of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight (on which the jury at the first trial had been unable to reach a verdict) and Mr Ali argued that it was impossible for the retrial to be fair, given the impact of the adverse publicity. His argument was rejected by the retrial judge and he was convicted at the retrial. He was sentenced to life imprisonment with a minimum term of 40 years.

The Court found in particular that the applicable legal framework in the UK for ensuring a fair trial in the event of adverse publicity had provided appropriate guidance for the retrial judge. It further found that the steps taken by the judge were sufficient. Thus, he considered whether enough time had elapsed to allow the prejudicial reporting to fade into the past before the retrial commenced and recognised the need to give careful jury directions on the importance of impartiality and of deciding the case on the basis of evidence led in court only. He subsequently gave regular and clear directions, to which Mr Ali did not object. The fact that the jury subsequently handed down differentiated verdicts in respect of the multiple defendants in the retrial proceedings supported the judge's conclusion that the jury could be trusted to be discerning and follow his instructions to decide the case fairly on the basis of the evidence led in court alone.

Principal facts

The applicant, Abdulla Ahmed Ali, is a British national who was born in 1980 and is currently detained at HM Prison Frankland (County Durham, England).

In August 2006 Mr Ali was arrested, along with others, in the context of a large-scale counter-terrorism operation. It was alleged that he had conspired to cause explosions on board transatlantic flights using liquid bombs.

On 8 September 2008 the jury found him guilty of conspiracy to murder but was unable to reach a verdict on the more specific charge of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Following the verdict, there was extensive media coverage of the case, including reporting on material which had never been put before the jury. Soon after, the Crown Prosecution Service announced its intention to seek a retrial on the more specific charge of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight and, around mid-September 2008, the reporting ceased.

After the retrial had been announced Mr Ali sought a stay on proceedings, claiming that a fair trial was no longer possible due to the impact of adverse publicity which had occurred following the conclusion of the first trial. The request for a stay was refused in December 2008, the judge considering that sufficient time would have passed since the end of the prejudicial reporting and the commencement of the retrial to prevent any unfairness to the trial and undertaking to give clear instructions to the jury to try the case only on evidence heard in court.

The retrial started in March 2009. During jury selection, the trial judge underlined the importance of impartiality and asked questions to elicit any information which might put the impartiality of any particular jury member in doubt. Once the jury had been selected and then throughout the trial, the judge gave directions to the jury not to discuss the case with family or friends, not to read newspaper reports or watch television broadcasts about the case and not to carry out research. He emphasised in particular that the jury had to decide the case on the evidence heard in court and nowhere else. During his summing-up, the judge again reminded the jury that they should not discuss the case with anyone outside the jury and, after the jury had retired to deliberate, he reminded them each evening that they should not discuss the case outside the jury room.

Mr Ali was convicted in September 2009 of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight and was sentenced to life imprisonment with a minimum term of 40 years. Of four co-defendants retried on charges of conspiracy to murder, one was convicted and the jury were unable to reach a verdict in respect of the other three. Of six co-defendants tried on charges of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight, two were convicted, three were acquitted and the jury were unable to reach a verdict in respect of one.

Mr Ali's appeal against conviction was dismissed in May 2011. In its decision the Court of Appeal reviewed the ruling of December 2008 on the application for a stay on proceedings, agreeing with the retrial judge that, given the trial process and the time that had elapsed before the retrial, there was no risk of any bias.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Mr Ali complained that he had not received a fair trial by an impartial tribunal due to the extensive adverse media coverage between his first trial and his retrial.

The application was lodged with the European Court of Human Rights on 15 May 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

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

Decision of the Court

The Court recalled that it was rare that pre-trial publicity would make it impossible to have a fair trial at some future date, it generally being sufficient to have an appropriate lapse of time between the prejudicial comments in the media and the subsequent criminal proceedings, together with suitable directions to the jury.

First, the Court looked at the applicable legal framework for ensuring a fair trial in the event of adverse publicity and found that it provided appropriate guidance, which enabled a trial judge to take a variety of steps during the trial process to ensure fairness of the trial.

It accepted that the published material at issue in the case was prejudicial to Mr Ali and went on to examine whether the steps taken by the retrial judge had been sufficient to ensure fairness in Mr Ali's retrial. The Court was satisfied that the judge had taken care to underline the importance of impartiality during jury selection and that, once the jury had been selected, he had given clear directions as appropriate throughout the trial, during his summing-up and each evening after the jury had retired to deliberate. Mr Ali did not object to the selection of the jury members or the content of the judicial directions.

The Court was likewise satisfied with the reasons given by the judge in the retrial for refusing the application for a stay on proceedings and by the Court of Appeal for dismissing the appeal. It noted that when publication of the prejudicial material had commenced, the decision to pursue a retrial had not yet been made. Any members of the public exposed to the reports would not have known at that time that they would be involved in the subsequent retrial. The trial judge had considered whether sufficient time had elapsed to allow the reports to fade into the past, having carefully reviewed the content of each and every instance of reporting to which his attention had been drawn, and had recognised the need for careful jury directions, which he had subsequently given. There was nothing in the circumstances of the case to suggest that the jury could not be relied upon to follow the judge's instructions to try the case only on the evidence heard in court. The fact that the jury subsequently handed down differentiated verdicts in respect of the multiple defendants in the retrial proceedings supported the trial judge's conclusion that the jury could be trusted to be discerning and to ignore previous media reports and, consequently, decide the case fairly on the basis of the evidence led in court.

The Court concluded that it had not been shown that the adverse publicity had influenced the jury to the point of prejudicing the outcome of the proceedings and rendering Mr Ali's trial unfair. There had therefore been no violation of Article 6 § 1 in the present case.

The judgment 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.