



## Court rules on delaying access to lawyers during police questioning of 21 July London bombers

In today's **Grand Chamber** judgment<sup>1</sup> in the case of **Ibrahim and Others v. the United Kingdom** (applications nos. 50541/08, 50571/08, 50573/08 and 40351/09) the European Court of Human Rights held, by 15 votes to two, that there had been no violation of the rights of three applicants (Mr Ibrahim, Mr Mohammed and Mr Omar) under **Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance)** of the European Convention on Human Rights. However, the Court held, by 11 votes to six, that there had been a breach of those provisions in respect of the fourth applicant, Mr Abdurahman. Concluding that it did not follow from the Court's finding of a violation that Mr Abdurahman had been wrongly convicted, it being impossible to speculate as to the outcome of the proceedings had there been no breach of the Convention, the Court awarded no compensation to him for pecuniary or non-pecuniary damage. An award was made for Mr Abdurahman's legal fees.

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene. The first three applicants, Mr Ibrahim, Mr Mohammed and Mr Omar, were later arrested on suspicion of having detonated three of the bombs. They were questioned by the police in urgent "safety interviews" before having had access to legal advice. They were subsequently convicted of conspiracy to murder. They complained before the Court about the temporary delay in providing them with access to a lawyer and the admission at their subsequent trials of statements made in the absence of lawyers.

In respect of these applicants the Court was convinced that, at the time of their initial police questioning, there had been an urgent need to avert serious adverse consequences for the life and physical integrity of the public, namely further suicide attacks. There had therefore been compelling reasons for the temporary restrictions on their right to legal advice. The Court was also satisfied that the proceedings as a whole in respect of each of the first three applicants had been fair.

The position with regard to Mr Abdurahman, the fourth applicant, who also complained about the delay in access to a lawyer, was different. He was initially interviewed as a witness, and therefore without legal advice. However, it emerged during questioning that he had assisted a fourth bomber following the failed attack. At that point, according to the applicable code of practice, he should have been cautioned and offered legal advice. However, this was not done. After he had made a written witness statement, he was arrested, charged with, and subsequently convicted of, assisting the fourth bomber and failing to disclose information after the attacks.

In his case, the Court was not convinced that there had been compelling reasons for restricting his access to legal advice and for failing to inform him of his right to remain silent. It was significant that there was no basis in domestic law for the police to choose not to caution Mr Abdurahman at the point at which he had started to incriminate himself. The consequence was that Mr Abdurahman had been misled as to his procedural rights. Further, the police decision could not subsequently be reviewed as it had not been recorded and no evidence had been heard as to the reasons behind it. As there were no compelling reasons, it fell to the Government to show that the proceedings were nonetheless fair. In the Court's view they were unable to do this and it accordingly concluded that the overall fairness of Mr Abdurahman's trial had been prejudiced by the decision not to caution him and to restrict his access to legal advice.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Principal facts

The applicants in the first three applications, Muktar Said Ibrahim, Ramzi Mohammed and Yassin Omar, are Somali nationals who were born in 1978, 1981, and 1981 respectively. The applicant in the fourth application, Ismail Abdurahman, is a British national who was born in Somalia in 1982.

On 7 July 2005 suicide bombers detonated their bombs on the London transport system, killing 52 people and injuring countless more. Two weeks later, on 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene but were later arrested.

Following the arrest of the first three applicants – Mr Ibrahim, Mr Mohammed and Mr Omar – they were temporarily refused legal assistance in order for police “safety interviews” (interviews conducted urgently for the purpose of protecting life and preventing serious damage to property) to be conducted. Under the Terrorism Act 2000, such interviews can take place in the absence of a solicitor and before the detainee has had the opportunity to seek legal advice. During the interviews the applicants denied any knowledge of the events of 21 July. At trial, they acknowledged their involvement in the events but claimed that the bombs had been a hoax and were never intended to explode. The statements made at their safety interviews were admitted at trial. They were convicted in July 2007 of conspiracy to murder and sentenced to a minimum term of 40 years’ imprisonment. The Court of Appeal subsequently refused them leave to appeal against their conviction.

Mr Abdurahman, the fourth applicant, was not suspected of having detonated a bomb and was initially interviewed by the police as a witness. He started to incriminate himself by explaining his encounter with a fourth suspected bomber shortly after the attacks and the assistance he had provided to that suspect. According to the applicable code of practice, he should have been cautioned and offered legal advice at that point. However, after taking instructions from a senior officer, the police continued to question him as a witness and took a written statement from him. He was subsequently arrested and offered legal advice. In his ensuing interviews, he adopted and referred to his written statement. His witness statement was admitted as evidence at his trial. He was convicted in February 2008 of assisting the fourth bomber and of failing to disclose information about the bombings. He was sentenced to ten years’ imprisonment, reduced to eight years on appeal on account of the early assistance that he had given to the police.

## Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention on Human Rights, the applicants complained about their lack of access to lawyers during their initial police questioning, alleging that their subsequent convictions had been unfair because of the admission at trial of the statements they had made during those police interviews.

The first three applications were lodged with the European Court of Human Rights on 22 October 2008. The fourth application, by Mr Abdurahman, was lodged on 29 July 2009.

In its Chamber [judgment](#) of 16 December 2014, the European Court of Human Rights, held, by six votes to one, that there had been no violation of Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention.

On 1 June 2015 the case was referred to the Grand Chamber at the request of two of the applicants (Mr Omar (application no. 50573/08) and Mr Abdurahman (application no. 40351/09)).

Fair Trials International was granted leave to intervene as a third party in the written proceedings (Article 36 § 2 of the Convention).

A Grand Chamber hearing was held on the case in Strasbourg on 25 November 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido Raimondi (Italy), *President*,  
András Sajó (Hungary),  
Işıl Karakaş (Turkey),  
Luis López Guerra (Spain),  
Mirjana Lazarova Trajkovska (“the Former Yugoslav Republic of Macedonia”),  
Ganna Yudkivska (Ukraine),  
Khanlar Hajiyev (Azerbaijan),  
Nona Tsotsoria (Georgia),  
Vincent A. de Gaetano (Malta),  
Julia Laffranque (Estonia),  
Paul Lemmens (Belgium),  
Paul Mahoney (the United Kingdom),  
Johannes Silvis (the Netherlands),  
Dmitry Dedov (Russia),  
Robert Spano (Iceland),  
Iulia Motoc (Romania),  
Síofra O’Leary (Ireland),

and also Lawrence Early, *Jurisconsult*.

## Decision of the Court

Two questions had to be examined: whether there were compelling reasons for the restrictions on the applicants’ access to legal advice; and whether the proceedings as a whole were fair. If compelling reasons were shown, then the Court would take a holistic approach to the assessment of the fairness of the proceedings. If, on the other hand, there were no compelling reasons for the restrictions, then there was a presumption that the proceedings were unfair. This presumption could be rebutted by the Government if they demonstrated that, on the facts of the case, no unfairness arose.

The Court was convinced that, at the time of the first three applicants’ initial police questioning, there had been an urgent need to avert serious adverse consequences for the life and physical integrity of the public, namely further suicide attacks. It referred to the pressing duty on the authorities to protect the rights of potential and actual victims under Article 2 (the right to life), Article 3 (prohibition on torture and inhuman or degrading treatment) and Article 5 § 1 (right to liberty and security) of the Convention. The police had been operating under enormous pressure and their overriding priority had, quite properly, been investigations and interviews to obtain as a matter of urgency information on any further planned attacks and the identities of those potentially involved in the plot. The possibility of restricting access to legal advice in such exceptional circumstances recognised the unique and highly difficult conditions with which the police in London had been faced in July 2005. It was significant that in the case of the first three applicants there was a clear framework in place, set out in legislation, regulating the circumstances in which access to legal advice for suspects could be restricted and offering important guidance for operational decision-making. The restrictions were also temporary in nature, the legislation providing that they had to end as soon as the circumstances justifying them ceased to exist and that they were subject to a strict upper time-limit of 48 hours. Lastly, the decision to limit the right to legal advice had been taken by a police officer based on the specific facts of each three applicants’ cases and the decisions had been recorded. The Court was therefore satisfied that there were compelling reasons for the temporary restrictions of the first three applicants’ right to legal advice.

As to whether the proceedings as a whole were fair, the Court again referred to the detailed legal framework in place. It noted that the police had adhered strictly to the law, in spite of the pressures under which they had been operating. The purpose of the safety interviews – to obtain information necessary to protect the public – had been strictly observed and it was also noteworthy that the three applicants had been formally arrested and informed of their right to silence and their right to legal advice. They had also been told the reasons for the decision to restrict their access to legal advice. There had also been procedural opportunities to allow the applicants to challenge the admission and use of the safety interview evidence. Notably, a *voir dire*, or “trial within a trial”, had taken place before the trial judge who thoroughly examined the applicants’ complaints about the circumstances in which their statements had been obtained and determined whether it would be unfair to admit them. At the hearing, the applicants, represented by counsel, had been able to present evidence as to the circumstances of their questioning. In a detailed and comprehensive ruling, the trial judge had given clear reasons for his findings that the restrictions had been justified. His ruling that the statements were admissible had not prevented the applicants from then challenging the statements at trial and again before the Court of Appeal. The Court of Appeal had carefully reviewed the trial judge’s approach to the admission of the evidence and found that the exercise of his discretion had been fully-informed and defendant-specific.

Furthermore, the statements had been merely one element of a substantial prosecution case against the first three applicants. In particular, there was damning scientific evidence as to the construction of the bombs, such as the fact that they contained hydrogen peroxide at a concentration which had been manually increased by the applicants and that they contained shrapnel, intended to maximise injuries upon explosion, entirely unnecessary if the bombs had been meant as a hoax. There was also extensive evidence of the three applicants’ extremist views, the extensive contact between the three men from March 2005 onwards and the applicants’ reactions when the devices had been detonated but had failed to explode.

Moreover, in his summing-up to the jury, the trial judge had summarised the prosecution and defence evidence in detail and carefully directed the jury on matters of law, expressly instructing them to take into account that the applicants had been questioned before having had access to legal advice and to bear in mind the possibility of innocent explanations for the lies they had told.

The Court also referred to the strong public interest in preventing and punishing indiscriminate terrorist attacks, which by their very nature intend to strike fear into the hearts of innocent civilians, to cause chaos and panic, and to disrupt the proper functioning of everyday life.

In conclusion, the Court was satisfied that the proceedings as a whole in respect of each of the first three applicants had been fair. There had therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention as concerned Mr Ibrahim, Mr Mohammed or Mr Omar.

However, as concerned Mr Abdurahman, the fourth applicant, the Court was not convinced that the Government had demonstrated compelling reasons for restricting his access to legal advice and failing to inform him of his right to remain silent. It was significant that there was no basis in domestic law for the police to choose not to caution Mr Abdurahman at the point at which he had started to incriminate himself. Indeed, the decision had been contrary to the applicable code of practice. The consequence was that Mr Abdurahman had been misled as to his procedural rights. Further, the police decision could not subsequently be reviewed by the British courts or by the Court to evaluate the reasons or to assess whether Mr Abdurahman’s procedural rights had been taken into account, since it had not been recorded and no evidence had been heard as to the reasons behind it.

The failure to show that there were compelling reasons to restrict access to legal advice meant that there was a presumption that the proceedings in respect of Mr Abdurahman had been unfair. The burden lay on the Government to show that, on the facts, this was not the case. The Court reiterated that, unlike the first three applicants, there was no legal basis for the decision not to caution Mr

Abdurahman or to offer him legal advice. Because the police had deliberately decided to keep questioning him as a witness, even though by then they considered him to be a suspect, he was not notified of his right to silence or his right to legal advice.

The Court accepted that Mr Abdurahman had had procedural opportunities to challenge the admission and use of his statement during his initial questioning. Again, a “trial within a trial” had taken place and the judge had ruled that there had not been any oppression during the interview or that anything had been done or said by the police to have made his statement unreliable. Before the trial proceedings, the trial judge had again, at the request of Mr Abdurahman, examined the circumstances in which the statement had been obtained and found that, even after having consulted his lawyer, he had not retracted his witness statement and had even based his defence at trial on what he had told the police in that statement. Nevertheless, it was striking that the trial court had not apparently heard evidence from the senior police officer who had authorised the continuation of the witness interview. As the Court had already pointed out, that meant that the trial court, and later the Court of Appeal, had been denied the opportunity to review the reasons for the decision.

Furthermore, Mr Abdurahman’s statement had been central to the prosecution’s case. Notably, it was the content of his witness statement which had first provided the grounds upon which the police had suspected him of involvement in a criminal offence, thus providing them with the framework around which they had subsequently built their case. Mr Abdurahman’s statement could therefore be considered to have formed an integral and significant part of the evidence upon which his conviction had been based.

It was also significant that, in his summing up to the jury, the trial judge had instructed the jury members to take Mr Abdurahman’s statement into account if they were satisfied that it had been freely given, that he would have said these things even if the correct procedure had been followed and that the statement was true. The Court considered that those directions had left the jury with excessive discretion as to the manner in which the statement was to be taken into account.

The Court said that great weight had to be attached to the nature of the offences in Mr Abdurahman’s case. It emphasised that the threat posed by terrorism could only be neutralised by the effective investigation, prosecution and punishment of all those involved in terrorism. However, taking into account the high threshold that applied where the presumption of unfairness arises and having regard to the cumulative shortcomings in Mr Abdurahman’s case, the Court concluded that the Government had failed to show that the overall fairness of the trial had not been irretrievably prejudiced by the decision not to caution him and to restrict his access to legal advice. There had therefore been a violation of Article 6 §§ 1 and 3 (c) of the Convention as concerned Mr Abdurahman.

#### [Article 41 \(just satisfaction\)](#)

Concluding that it did not follow from the Court’s finding of a violation that Mr Abdurahman had been wrongly convicted, it being impossible to speculate as to the outcome of the proceedings had there been no breach of the Convention, the Court dismissed his claims for pecuniary and non-pecuniary damage. Mr Abdurahman also sought almost 36,000 pounds sterling in legal fees. The Court examined the work carried out by his lawyers and decided to award 16,000 euros.

#### Separate opinions

Judge Mahoney expressed a concurring opinion. Judges Sajó and Laffranque expressed a joint partly dissenting, partly concurring opinion. Judges Sajó, Karakaş, Lazarova Trajkovska and De Gaetano expressed a joint partly dissenting opinion. Judges Hajiyev, Yudkivska, Lemmens, Mahoney, Silvis and O’Leary expressed a joint partly dissenting opinion. Judge Lemmens expressed a partly dissenting opinion. Judge Sajó expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

**Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

George Stafford (tel: + 33 3 90 21 41 71)

**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.