AS TO THE ADMISSIBILITY OF

Application No. 37401/97
by Badrul MIAH
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 1 July 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 August 1997 by Badrul MIAH against the United Kingdom and registered on 19 August 1997 under file No. 37401/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1976 and currently detained in HM Prison Wormwood Scrubs, London. He is represented by JR Jones & Co., solicitors, of Ealing, West London.

The facts, as submitted by the applicant, can be summarised as follows.

A. Particular circumstances of the case

On 13 August 1994, following a series of racial incidents between white and Asian youths in the Somers Town area of North London, a 15 year old white boy, Richard Everitt, was stabbed and killed by a gang of Asian youths.

The prosecution case was that following an earlier dispute, a gang of Asian youths left the Drummond Street area of London where they lived and went to nearby Somers Town. Their intention was to find and inflict serious bodily injury on a Liam Coyle. It was the prosecution case that the group initially attacked Mark Andrew, inflicting minor

injury, before attacking Richard Everitt and two friends in York Way. Richard Everitt was stabbed once and died from his injury. The prosecution alleged that the applicant, though not necessarily the knife wielder, was a prominent member of the gang when the knife was used and further, that the attack was part of a joint enterprise to inflict really serious harm and that the applicant was a party to the joint enterprise.

The applicant was charged with two others, Showkat Akbar and Abdul Hai. Nine counts were brought against the applicant in total. The applicant was charged with conspiracy to inflict grievous bodily harm on Liam Coyle, violent disorder, conspiracy to pervert the course of justice and the murder of Richard Everitt, with which Abdul Hai was also charged.

The trial took place from 5 October 1995 until 1 November 1995 before Mrs Justice Steel.

After the close of the prosecution case, submissions of no case to answer were made on behalf of all three accused. Mrs Justice Steel rejected the submissions regarding Showkat Akbar and the applicant but accepted the submissions in respect of Abdul Hai. Consequently, she directed the jury to return verdicts of not guilty in respect of Abdul Hai. The jury then sent her a letter asking why they had been directed to give this verdict. The judge explained that as a matter of law there was insufficient evidence to convict Abdul Hai.

The applicant and Showkat Akbar both gave evidence. The applicant's defence was that he had not been part of the group which had attacked Richard Everitt but had come upon them by chance and had started to talk to them. Richard Everitt had run past him, bleeding profusely, after being stabbed.

The applicant was convicted unanimously on 1 November 1995 of conspiracy to inflict grievous bodily harm and violent disorder. He was acquitted of conspiracy to pervert the course of justice. The jury was at that stage unable to reach a verdict on the murder charge but did ultimately come to a majority verdict of guilty by 10 to 2.

The applicant was sentenced to imprisonment for life for murder with 3 years concurrent on the counts alleging conspiracy to cause grievous bodily harm and violent disorder.

On 5 November 1995, after the trial, the applicant's solicitor obtained a phone call from a man subsequently identified as V.. V. stated that he was the partner of one of the jurors and that his partner had information which might interest the solicitor. The solicitor ended the telephone call at that point and took the advice of counsel who advised that it was a criminal offence to reveal the contents of jury deliberations. The solicitor passed this information to V. but added that his partner could reveal anything which fell outside the realms of jury deliberation.

The applicant appealed to the Court of Appeal. The grounds of appeal concerned the joinder of the conspiracy count with the violent disorder and murder counts, and the direction given to the jury by the judge regarding any lies they found that the applicant had told, his good character and the law as to joint enterprise and intent to murder.

On 6 November 1996, two days before the applicant's appeal was due to be heard, the applicant's solicitor telephoned V. to verify that there was nothing V.'s partner wanted to tell him. V. told the applicant's solicitor that his partner had produced a document shortly after the trial. V. brought the document to the applicant's solicitors. The document stated, in its original form:

"That the majority of the jury made up their minds very

early on in the prosecutions case.

That there seemed to be a presumption of guilt rather than one of innocence and that it was left to the defence to prove innocence instead of the prosecution proving guilt.

At the beginning of the jurors deliberations, after the summing up of the judge, the jurors requested the transcripts of certain witnesses evidence. These were not given and the response from the judge was that she would make clear any points but that the transcripts would not be made available. This was upsetting to certain members of the jury because earlier on in the trial the judge had suggested to the jury that they should not write down so much in their note pads. As a result many desisted as they were reassured that they would have full access to any details later if requested. The jury as a result did not have access during their deliberations to the exact words of the witnesses. Something that certain of them required in order to exactly clarify certain points, for example exact timings, places and wordings.

This meant that very little discussion took place in the jury room because there was no factual evidence to relate to. Opinions became entrenched based on assumptions.

Aware that it is not the jurors duty to concern themselves with sentencing, some of the jurors were rather naive on the implications of awarding a guilty verdict for murder. Some thought that because <the applicant> was only twenty years old and not yet twenty one, he would:
"probably get away with seven years and a social worker".
They seemed unaware of the mandatory life sentence for a murder conviction.

One juror during the deliberations admitted that he believed that <the applicant> had actually been the murderer who administered the fatal stab wound. As he said this another four or five jurors said they agreed with him, even though no evidence was ever put forward to support this allegation and that the prosecution stated clearly at the outset of the trial that none of the defendants administered the blow.

No direct racial prejudice was spoken of or obviously displayed by any member of the jury, however, there was an instant assumption of guilt by many jurors that indicates certain underlying prejudice of some description.

There was an occasion on the day that the prosecutions case came to an end. The jury were not in court and legal matters were being discussed. That morning the jury were discussing the case around Abdul, the third defendant. To juror A it was clear that there was very little evidence supporting a verdict of guilty for Abdul, however it became clear during discussions with the other jurors that many of them were leaning towards a guilty verdict. Juror A contested this saying that there was absolutely no evidence to support this at all, but the other jurors continued to slant evidence in support of a guilty verdict.
Had a verdict been asked for at that time then it would have been a majority guilty one.
Later that day the judge called the jurors in and nominated one of the jurors to stand up as a foreman and pronounce a verdict of not guilty on Abdul. This was duly done and Abdul left the court. The jurors were angry and confused at this and wrote for an explanation from the judge. The

explanation was that there was not enough evidence to support the case, quite contrary to the opinion of the jurors.
A comment from one of the jurors in response to this was "we'll make sure we get the other one then".

The appeal was heard on 8 November 1996. The applicant argued that the Court of Appeal ought to permit the applicant to file amended grounds of appeal, adjourn the hearing and investigate the allegations made by V.'s partner. These submissions were rejected.

The Court of Appeal gave its written judgment on 9 December 1996. It stated that there were practical and legal reasons for dismissing the appeal. The practical reasons were clarified as follows:

> "... the material placed before us lacks substance. We are by no means satisfied that any juror revealed anything and if they have not there is nothing to enquire into. Even if the document annexed to <the applicant's solicitor's> statement is what it is alleged to be, most of the allegations it contains cannot be investigated further without contravening section 8(1) of the 1981 Act and the rest amount to little more than assertions about views expressed by individual unidentified jurors before they began their formal deliberations. Furthermore in reality it is difficult to see how an investigation initiated more than 12 months later could possibly yield any meaningful result. No one is likely to remember whether such things were said. Still less are they likely to be able, without trespassing on the forbidden ground of the deliberations themselves, to say anything to assist in relation to whether or not views or attitudes expressed at an early stage had any effect on the result."

The Court of Appeal then emphasised that there was a long line of authority which precluded investigation of deliberations conducted by the jury.

> "..it is a settled rule of long standing that an appellate court will not receive evidence from jurors about discussions or other matters that took place in the jury box or jury room concerning the cases in which they were acting".

On 6 February 1997, the Court of Appeal refused leave to appeal to the House of Lords in respect of the argument relating to the jury deliberations. However, leave was granted to appeal to the House of Lords in respect of the direction regarding joint enterprise and intent to murder. This appeal was withdrawn in light of the House of Lords' judgment in Powell and Daniels (1996 1 Cr. App.R. 14) on 30 October 1997, in which the House of Lords rejected essentially the same grounds of appeal.

B. Relevant domestic law and practice

Section 8 of the Contempt of Court Act 1981 provides:

> "8(1) Subject to subsection (2) below, it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed or votes cast by members of a jury in the course of their deliberations in any legal proceedings
> (2) this section does not apply to disclosure of any particulars-
> (a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict... or to the

publication of any particulars so disclosed".

It is a long-standing rule of English law that enquiries should not be made as to what takes place in the jury room after the jury have retired. Case law supports this principle.

In Ellis v. Deheer [1922] 2 KB 113, a civil case, Atkin LJ propounded reasons for the prohibition on inquiries into the contents of jury deliberations noting that "the court does not admit evidence of a juryman as to what took place in the jury room.. The reason that evidence is not admitted is twofold, on the one hand it is in order to secure the finality of decisions arrived at by the jury, and on the other to protect the jurymen themselves and prevent their being exposed to pressure to explain the reasons which actuated them in arriving at their verdict."

In R v. Young [1995] 2 Cr App R 379 Lord Taylor CJ held stated that "in our judgment the court cannot, after verdict, inquire into what passed between the jurors during their deliberations in their retiring room in the respects specified in section 8(1)".

COMPLAINTS

The applicant invokes Article 6 paras. 1 and 2. He states that he was denied a fair trial since he was not tried by an impartial tribunal. He also alleges that the jury presumed that he was guilty from the outset. The applicant further complains that the Court of Appeal failed to verify whether the court which tried him was "an impartial tribunal".

THE LAW

The applicant complains that his trial was unfair and invokes Article 6 paras. 1 and 2 (Art. 6-1, 6-2) of the Convention which provide, insofar as relevant, as follows

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The applicant submits that, as disclosed by the statement of V.'s partner, the jury which convicted him was not impartial since members of the jury acted with personal bias against him and presumed his guilt. Even assuming there was no subjective bias, the information was sufficient to raise a legitimate doubt as to the jury's impartiality. He points to the Court of Appeal's refusal and/or inability to order an investigation of the jury and relies on the case of Remli v. France (Eur. Court HR judgment of 23 April 1996, Reports 1996-II, p. 559) for the proposition that if domestic courts fail to check whether a tribunal is impartial, thereby depriving the accused of the possibility of remedying the situation, there is a breach of Article 6 para. 1 (Art. 6-1).

The Commission notes, first of all, that it is of fundamental importance in a democratic society that courts inspire confidence in the public and in the accused. Tribunals, including juries must, therefore, be impartial from a subjective as well as from an objective viewpoint (Eur. Court HR, Pullar v. the United Kingdom judgment of 10 June 1996, Reports 1996-III, p. 783 at pp. 793-4, paras. 32, 38).

The Commission finds, on examination of the material in the file, that there is no convincing evidence of actual or subjective bias on

the part of one or more jurors. The Commission notes the reservations of the Court of Appeal as to the source and contents of the document allegedly derived from a juror via V. more than a year after the events in question.

As regards whether there were in the circumstances sufficient guarantees to exclude any objectively justified or legitimate doubts as to the impartiality of the jury, the standpoint of the accused, though important, is not decisive (Eur. Court HR, Remli v. France, op. cit., p. 309, para. 45). Moreover, the Commission considers that the extent of the inquiry which the domestic courts must undertake into allegations will be dependent upon the strength of the evidence of alleged bias.

The Commission acknowledges that the rule governing the secrecy of the jury deliberations is a legitimate and crucial feature of English jury trials 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 (Eur. Court HR Gregory v. United Kingdom judgment of 25 February 1997, Reports 1997-I, p. 296 at p. 309, para. 44). While the Court of Appeal considered itself barred from investigating the jury deliberations, it did however examine the document submitted. It was not satisfied that it was derived from a juror but found that even if it was, due to the time lapse, any investigation as to what was said by any juror and what role it played in any verdict would be likely to be unhelpful. It also assessed many of the passages as comments expressed by individual jurors before their formal deliberations began. The Commission notes that the jurors would at that later stage have heard the evidence as a whole and would have been instructed by the judge as to their duties in regard to assessing that evidence and heard the judge's summing-up of the case.

The Commission finds that the allegations contained in the document were not of such a nature as to raise serious doubts as to the impartiality of the jury. The note stated that "no direct racial prejudice was spoken of or obviously displayed by any member of the jury". Although the purported juror, V.'s partner, felt that the jury members were prejudiced in favour of a guilty verdict from the outset, this is subjective supposition. Indeed, the fact that the jury members were concerned by the judge's refusal to provide a transcript of the evidence suggests that the jury took their task of analysing evidence seriously. It is noteworthy that none of jurors made any attempt to write a note to the judge to convey any concerns about the manner in which the jury were deliberating. Moreover, both juror A, who, according to the note, was the most perspicacious about the weight of evidence against Abdul Hai, and the juror who was V.'s partner, must have voted in favour of guilty verdicts on the applicant in respect of conspiracy to commit grievous bodily harm on Liam Coyle and violent disorder.

In the circumstances of the present case, the Commission considers that the analysis undertaken by the Court of Appeal, in assessing the strength of the allegations of alleged bias and therefore the merits of the applicant's appeal regarding the jury, was sufficient to dispel any objectively-held misgivings about the impartiality of the jury and provide the applicant with a fair hearing complying with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention. Nor in these circumstances does it appear that the principle of the presumption of innocence was infringed during the proceedings.

The Commission therefore finds that there was no appearance of a violation of Article 6 paras. 1 or 2 (Art. 6-1, 6-2) of the Convention. It follows that the application should be rejected as manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	M.P. PELLONPÄÄ
Secretary	President
to the First Chamber	of the First Chamber