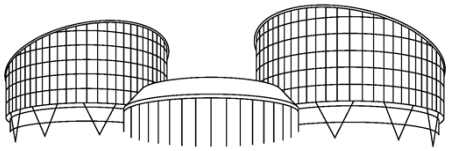

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF IBRAHIM AND OTHERS v. THE UNITED KINGDOM

(Applications nos. 50541/08, 50571/08, 50573/08 and 40351/09)

JUDGMENT

STRASBOURG

16 December 2014

THIS CASE WAS REFERRED TO THE GRAND CHAMBER WHICH DELIVERED JUDGMENT IN THE CASE ON 13/09/2016

This judgment may be subject to editorial revision.

In the case of Ibrahim and Others v. the United Kingdom,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 13 November 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in four applications (nos. 50541/08, 50571/08, 50573/08 and 40351/09) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

2. The first three applications were lodged by Mr Muktar Said Ibrahim, Mr Ramzi Mohammed and Mr Yassin Omar on 22 October 2008. They are Somali nationals who were born in 1978, 1981, and 1981 respectively. The fourth application was lodged on 29 July 2009 by Mr Ismail Abdurahman, a British national who was born in Somalia in 1982.

3. The applicants were represented as follows:

- Mr Ibrahim and Mr Mohammed were represented by Irvine Thanvi Natas, a firm of solicitors based in London, assisted by Mr J. Bennathan QC, counsel.

- Mr Omar was represented by Ms Muddassar Arani, a lawyer practising in Middlesex with Arani Solicitors, assisted by Mr S. Vullo, counsel.

- Mr Abdurahman was represented by Mr J. King and Ms A. Faul, counsel.

4. The United Kingdom Government ("the Government") were represented by their Agent, Ms A. Swampillai of the Foreign and Commonwealth Office.

5. The applicants alleged a violation of Article 6 §§ 1 and 3 (c) in that they had been interviewed by the police without access to a lawyer and that the evidence obtained from those interviews was used at their respective trials.

6. On 14 September 2010 the Court decided to give notice of the fourth applicant's application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

7. On 22 May 2012 the applications lodged by Mr Ibrahim, Mr Mohammed and Mr Omar were joined and declared partly inadmissible by a Chamber of the Fourth Section of the Court. On the same date, the Chamber decided to give notice of their complaints concerning their lack of access to a lawyer and the admission of the evidence of their police interviews at their trial to the Government. The Chamber also decided to rule on the admissibility and merits of those complaints at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

8. On 7 July 2005, four suicide bombs exploded on three underground trains and one bus in central London, killing fifty-two people and injuring hundreds more.

9. Two weeks later, on 21 July 2005, the first three applicants, Mr Ibrahim, Mr Mohammed and Mr Omar, and a fourth man, Mr Hussain Osman, detonated four bombs contained in rucksacks at separate points on the London public transport system. On 23 July 2005, a fifth bomb was discovered abandoned and undetonated in a bin. Mr Manfo Asiedu was identified as the fifth conspirator.

10. Although the four bombs were detonated, in each case the main charge, liquid hydrogen peroxide, failed to explode. Subsequent testing revealed that this was most likely the result of an inadequate concentration of the hydrogen peroxide: the hydrogen peroxide found in the bombs had a lower concentration than that which would have been necessary for it to explode.

11. The first three applicants and Mr Osman all fled the scenes of their attempted explosions. Images of the four men were, however, captured by closed-circuit television ("CCTV") cameras. A national police manhunt began, in which photographs and the CCTV images of the men were broadcast on national television. The following day, 22 July, a young man was shot and killed on the London underground by police after being mistaken for one of the men. The four men were arrested, the first three applicants in England between 27 and 29 July and Mr Osman in Rome, Italy, on 30 July. They were tried and convicted for conspiracy to murder.

12. The fourth applicant, Mr Abdurahman, gave Mr Osman shelter at his home in London, during the period when Mr Osman was on the run from the police and before he fled to Rome. In separate proceedings, Mr Abdurahman was tried and convicted of assisting Mr Osman and failing to disclose information after the event.

13. The details of the applicants' arrests and initial police questioning are set out more fully below.

B. The case of the first three applicants

1. The arrests and interviews

(a) The arrest and interview of Mr Omar

14. The first of the bombers to be arrested was Mr Omar. He was arrested on 27 July 2005 at 5.15 a.m. in Birmingham.

15. Upon arrest, he was cautioned by the police using the "new-style" caution (see paragraph 137 below), namely that he did not have to answer questions but that anything he did say might be given in evidence, and that adverse inferences might be drawn from his silence if he failed to mention matters later relied on by him at trial. The police officers who accompanied him to the police station later gave evidence that Mr Omar had said that he had not known what he was doing, had not known that the bomb would go off and had not wanted to hurt anyone.

16. Mr Omar arrived at Paddington Green Police Station, London, at 7.20 a.m. At 7.50 a.m. he requested the attendance of a solicitor. He was told that he was entitled to consult a solicitor but that this right could be delayed for up to forty-eight hours if authorised by a police officer of the rank of superintendent or above. At 7.55 a.m. a superintendent ordered that Mr Omar be held incommunicado under Schedule 8 of the Terrorism Act 2000 (see paragraphs 140-143 below).

17. Shortly afterwards, a different superintendent directed that a safety interview be conducted with Mr Omar. A "safety interview" is an interview conducted urgently for the purpose of protecting life and preventing serious damage to property. The detainee is questioned in order to secure information that may help avert harm to the public, by preventing a further terrorist attack, for example. The interview may occur in the absence of a solicitor and before the detainee has had the opportunity to seek legal advice (see paragraphs 146 et seq. below).

18. At 9 a.m. a brief safety interview took place. It lasted three minutes and focused on whether there was anything unsafe in a bag which Mr Omar had discarded when he was arrested.

19. At 9.15 a.m. the custody officer at Paddington Green contacted the duty solicitor on behalf of Mr Omar.

20. At 10.06 a.m. and 10.14 a.m. Mr Omar again requested access to a solicitor. He was told that this would be arranged as soon as the booking-in process had been completed.

21. At 10.24 a.m. the custody officer was told that a further safety interview had been authorised. It was recorded in writing that Mr Omar had not been given access to legal advice on the grounds that delaying the interview would involve an immediate risk of harm to persons or damage to property and that legal advice would lead to the alerting of other people suspected of having committed offences but not yet arrested, which would in turn make it more difficult to prevent an act of terrorism or to secure the arrest, prosecution or conviction of persons in connection with terrorism offences. The reason for these beliefs, which was also recorded, was that Mr Omar was suspected of participating in the attacks of 21 July together with at least three as yet unidentified accomplices. There then followed four safety interviews.

22. Safety interview A commenced at 10.25 a.m. and concluded at 11.11 a.m. At the beginning of the interview, Mr Omar was given the old-style caution (see paragraph 135 below), namely that he did not need to say anything but that anything he did say might be given in evidence.

23. Safety interview B commenced at 11.26 a.m. and concluded at 12.11 a.m. Again, Mr Omar was given the old-style caution at the start of the interview.

24. At 12.19 p.m. the duty solicitor was contacted and was told that safety interviews were taking place.

25. At 12.31 p.m. safety interview C commenced. This time, Mr Omar was given the new-style caution. It finished at 1.17 p.m.

26. At 1.35 p.m. safety interview D commenced, following the administration of the old-style caution. It was completed at 2.20 p.m.

27. During the safety interviews, Mr Omar either claimed that he did not recognise the other suspects from the photos in the media or he gave an incorrect account of how he knew some of them. He deliberately incorrectly described their involvement in the events of 21 July.

28. Meanwhile, at 2.15 p.m., the custody officer contacted the duty solicitor. At 3.40 p.m. the duty solicitor arrived at the custody suite and was permitted to read the custody record.

29. At 4.08 p.m. Mr Omar was placed in a room for consultation with the duty solicitor. That consultation was interrupted at 4.15 p.m. for a further safety interview, which began at 4.19 p.m. and concluded at 4.21 p.m. and was conducted in the presence of the solicitor.

(b) The arrest and interview of Mr Ibrahim

30. The next suspect to be arrested was Mr Ibrahim. He was arrested on 29 July 2005 at 1.45 p.m. in a flat in West London. He was cautioned and asked whether there was any material on the premises which might cause

danger. He replied that there was not. He was also asked whether there was any material anywhere which the police should know about and he replied that the police already knew about "58 Curtis" (the premises where the explosive devices were believed to have been manufactured) because they had been there already. He identified the other man that the police had seen at the West London flat that day as Mr Mohammed and was asked whether Mr Mohammed had control of any materials likely to cause danger. He replied, "No, listen, I've seen my photo and I was on the bus but I didn't do anything, I was just on the bus". He was told that he would be interviewed about that later and that all the police wanted to know was whether there was anything at another location that was likely to cause danger. Mr Ibrahim indicated that he was aware that the police were trying to "link us to seven-seven" (referring to the events of 7 July 2005) and then said that he did "do the bus" but that he had had nothing to do with the events of 7 July.

31. Mr Ibrahim arrived at Paddington Green Police Station at 2.20 p.m. He requested the assistance of the duty solicitor.

32. At 4.20 p.m. he was reminded of his right to free legal advice and replied that he understood what had been said to him. The duty solicitor was contacted at 4.42 p.m. At 5 p.m. he called the police station and asked to speak to Mr Ibrahim. He was told that Mr Ibrahim was unavailable. The solicitor called again at 5.40 p.m. and was told that his details would be passed to the officer in charge of the investigation, but that telephone contact was impractical because the appropriate consultation rooms were unavailable.

33. At 6.10 p.m. a superintendent ordered an urgent safety interview and directed that Mr Ibrahim be held incommunicado. The custody record explained that his right to access to legal advice had been delayed because there were reasonable grounds for believing that delaying an interview would involve immediate risk of harm to persons or serious loss of, or damage to, property; and that it would lead to the alerting of other persons suspected of committing a terrorist offence but not yet arrested, which would make it more difficult to prevent an act of terrorism or secure the apprehension, prosecution or conviction of a person in connection with terrorism offences. The record referred to the suspicion that Mr Ibrahim had detonated an explosive device on 21 July 2005 as part of an organised attack intended to kill and injure members of the public.

34. At 7 p.m. a different solicitor called the police station and asked to speak to Mr Ibrahim. She was told that no-one of that name was held at the police station. At 7.45 p.m., when it was established that Mr Ibrahim was at the police station, she was told that he was already represented by the duty solicitor.

35. At 7.58 p.m. Mr Ibrahim was taken from his cell for a safety interview. At 8 p.m. the second solicitor contacted the custody officer. At

8.15 p.m., while Mr Ibrahim was being interviewed, the second solicitor called again seeking to speak to him.

36. At the beginning of the safety interview Mr Ibrahim was told:

> "...[I] am going to ask you some questions, you don't have to say anything if you don't want to but the court can draw what's called an inference from that and that just means that they can look upon your silence as perhaps a sign of guilt. And then what is being said here, it is being tape-recorded and it can be used in court."

This was, in effect, the new-style caution (see paragraph 137 below).

37. During the safety interview, Mr Ibrahim was asked whether he had any materials such as explosives or chemicals stored anywhere. He denied knowing where any such materials might be stored or having any knowledge of planned attacks which might endanger the public. He told the police that he did not know anything about explosives and that he had no links with any terrorist groups. He added that he did not know anyone who dealt with explosives, was a danger to society or was planning terrorist activities. He accepted that he knew Mr Omar, but denied knowing other men connected with the events of 21 July whose pictures had been shown on television. He was unaware of anyone he knew having been involved in these events. He said that Mr Mohammed was not someone who would be prepared to do anything like that. The safety interview ended at 8.35 p.m.

38. At 8.45 p.m. the duty solicitor arrived at the police station. Mr Ibrahim was sleeping and saw the solicitor at 10.05 p.m.

39. During subsequent interviews while Mr Ibrahim was in detention, which were conducted in the presence of a solicitor, he made no comment.

(c) The arrest and interview of Mr Mohammed

40. The last of the three suspects to be arrested was Mr Mohammed. He was arrested and cautioned on 29 July 2005 at 3.22 p.m. at the same West London flat as Mr Ibrahim.

41. He arrived at Paddington Green Police Station at 4.29 p.m. At 4.39 p.m. he requested the assistance of the duty solicitor. At 5.05 p.m. the custody officer asked the relevant officers to inform him whether Mr Mohammed was to be held incommunicado and at 5.48 p.m. this was authorised.

42. Simultaneously, a superintendent authorised a safety interview. The reasons for delaying access to legal advice were recorded. The superintendent indicated that he believed that delaying an interview would involve immediate risk of harm to persons or serious loss of, or damage to, property; that it would lead to others suspected of having committed offences but not yet arrested being alerted; and that by alerting any other person it would be more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of a person in connection with the commission, preparation or instigation of an act of terrorism.

43. At 6.59 p.m. the custody officer called the duty solicitor scheme. At 7.19 p.m. Mr Mohammed signed the custody record indicating that he wished to speak to a solicitor as soon as practicable. At 7.34 p.m. he was told that he was being held incommunicado.

44. At about 8 p.m. duty solicitors arrived at the front desk of Paddington Green Police Station.

45. At 8.14 p.m. the safety interview of Mr Mohammed commenced without the presence of a solicitor. He was given the new-style caution (see paragraph 137 below). He was told that he was suspected of involvement in the attacks of 21 July and was asked if he had any knowledge of further explosives, and those who had them, which could cause harm to the public in the near future. He maintained that he had nothing to do with the events of 21 July 2005 and that he knew nothing about them. He did not recognise the photographs of the alleged perpetrators which he had seen in the media. The safety interview finished at 8.22 p.m.

46. The duty solicitors arrived at the custody suite at 8.40 p.m. and saw Mr Mohammed at 9.45 p.m. The delay was partly caused by Mr Mohammed's request for time to pray and the provision of a meal.

47. On 31 July 2005 Mr Mohammed was interviewed for the second time, this time in the presence of a solicitor. Early in the interview, the solicitor read out the following statement by Mr Mohammed:

> "I am not a terrorist and I'm not in any way connected to any acts of terrorism and have not been connected to any acts of terrorism ... particularly on 21st July or the 7th July 2005."

48. Thereafter Mr Mohammed exercised his right to silence.

2. The trial of the first three applicants

49. The trial of the first three applicants for conspiracy to murder commenced in the Crown Court at Woolwich on 15 January 2007 before Mr Justice Fulford and a jury. It was to last seven months. The applicants stood trial alongside Mr Osman, Mr Asiedu (see paragraph 9 above) and Mr Adel Yahya (accused of taking part in the essential preparation for the attacks).

50. The applicants' defence was that although they had been involved in the events of 21 July 2005 and had detonated the explosive devices, their actions were not intended to kill but were merely an elaborate hoax designed as a protest against the war in Iraq. The bombs had been designed to look realistic and to cause a bang when they went off but had deliberately been constructed with flaws to ensure that the main charge would not detonate.

(a) The admissibility of the safety interviews

51. At the start of the trial, the applicants argued that the admission of the statements they had given during their safety interviews would have such an adverse effect on the fairness of the proceedings that they ought to be excluded pursuant to section 78 of the Police and Criminal Evidence Act 1978 ("PACE" – see paragraph 154 below). They contended that their right of access to a solicitor before and during the safety interviews had been violated and that their right against self-incrimination had been breached as a result of the use of the new-style caution, when the old-style caution, (which made it clear that no adverse inferences could be drawn from their silence because they had not had access to solicitors) ought to have been used instead. They also argued that the statements should be excluded on grounds of public policy as, if such statements were routinely admitted, there was a greater likelihood that suspects would refuse to answer questions about public safety.

52. A *voir dire* (i.e. a hearing to determine the admissibility of evidence) was conducted. At its conclusion, and after hearing counsels' submissions, the trial judge concluded that the statements made during the safety interviews could be admitted. His written ruling ran to 171 paragraphs and may be summarised as follows.

53. The judge referred at the outset to the explanation given by the police superintendent in charge of the investigation of the situation which he had faced. The superintendent had pointed in particular to the discovery of a quantity of chemicals, which appeared to be far in excess of that required to construct the devices used during the attacks of 21 July, and to evidence that the suspects had been in receipt of considerable post-event assistance.

54. The judge also considered the facilities available in the custody area at Paddington Green Police Station, where the applicants had been taken after their arrest and where the safety interviews had taken place. The entire custody facilities had been given over to the investigation into the attempted bombings. There were twenty-two cells, rooms for medical and forensic testing purposes and four rooms for consultations between suspects and their solicitors. However, at the time of Mr Ibrahim and Mr Mohammed's safety interviews, eighteen individuals suspected of terrorism offences were detained at the police station. The imperative was to prevent communication between the suspects and to avoid cross-contamination in the course of searches and other forensic processes.

55. The trial judge next referred to the relevant statutory framework governing access to legal advice for those held under terrorism legislation (see paragraphs 139 et seq. below), which made it clear that where a suspect was interviewed without legal assistance, the old-style caution should be administered, because section 34(2A) of the Criminal Justice and Public Order Act 1994 prohibited the drawing of adverse inferences from silence where the suspect had not had access to legal advice (see paragraph 136

below). However, he considered that this did not extend to preventing the court from admitting evidence of things said by a suspect during questioning, including any lies that he told. The judge indicated that the jury would be told that, contrary to the terms of the new-style caution that had been on occasion administered, no adverse inferences could be drawn from the applicants' failure to mention during questioning facts later relied on at trial.

56. He then turned to review this Court's case-law on access to legal advice and the right to silence, explaining:

> "In my view, the following conclusions are to be drawn from those decisions of the ECHR. First, legal advice can be withheld for good cause during the early stages of interviews, so long as the conditions in which the interviews occur are not significantly coercive (*Magee v. the United Kingdom*, no. 28135/95, ECHR 2000 VI) and so long as access is not delayed for an excessive period (*John Murray v. the United Kingdom,* 8 February 1996*, Reports of Judgments and Decisions* 1996-I). Moreover, interviewing a suspect having withheld legal advice and following a new-style caution is not decisive in the assessment of whether there has been a breach of Article 6 (*Averill v. the United Kingdom*, no. 36408/97, ECHR 2000-VI). Rather, the court must look at the circumstances overall and the use to which evidence is put (and including whether adverse inferences are drawn). Accordingly, so long as the overall circumstances have not caused irretrievable prejudice to the rights of the defendant, much will depend on the directions a jury receives as to how they should approach the silence or the statement of a suspect in these circumstances. As the Court made clear in *Averill*, considerable caution is required when attaching weight to the fact that a person arrested in connection with a serious criminal offence and having been denied access to a lawyer during the early stages of his interrogation responds in a particular way – or as in that case, does not respond – to the questions put to him. The need for caution is not removed simply because an accused is eventually allowed to see his solicitor and then refuses to answer questions. A jury must be given a strong and careful warning that they must take into account all of the relevant circumstances; they must have discounted all reasonable ('innocent') explanations for the accused's silence or statements before they consider using this material against him; and the jury must be told to be careful not to accord disproportionate weight to this evidence."

57. The trial judge considered that the applicable code of practice (see paragraphs 144-151 below) and the caution were primarily designed to protect an accused from self-incrimination and to warn him of the consequences if he chose to answer questions and the harm that could be done to his case if he failed to reveal elements of his defence on which he later relied at trial. Neither the code nor the caution was intended to protect defendants from telling lies. The judge explained:

> "Whilst I recognise that an accused may benefit from having a solicitor remind him of his moral duty to tell the truth, in my view it is an invalid argument to suggest that an interview is necessarily inadmissible because the suspect did not have the advantage of a consultation with a solicitor, who had been excluded for good cause, in order to tell him that he should not deceive the police."

58. He concluded that, despite the absence of a solicitor during the safety interviews and the use of the wrong caution, there was no significant unfairness or material infringement of the applicants' right to a fair trial.

59. In response to the submission that the applicants were confronted with irreconcilable propositions when asked to participate in the safety interviews, the judge found that they were not. He noted:

> "... The defendants were confronted with a stark but clear choice: either they could help the police in the knowledge that what they said may be utilised against them, or they could protect themselves and remain silent ... What is clear beyond doubt is that the defendants were not misled or deceived as to the underlying purpose of the interviews, the possible consequences of answering questions or the potential risks of not revealing elements of their defence ..."

60. He further observed that the defence that the applicants chose not to reveal at that stage was directly relevant to the public safety issues and was easy to describe. It did not require any detailed understanding of the criminal law or a complicated factual explanation. It could have been summed up by the single word "hoax". The judge accepted that it was sometimes necessary to have the assistance of a lawyer before a suspect could understand and describe a complicated defence, but said that this was not the case here.

61. The judge considered that the defendants might have had a more credible position if they had answered the questions posed in ways which were at least arguably designed to assist the public and which, as a result, incriminated them. However, it was common ground that they had either lied or failed to reveal what they knew in the safety interviews: rather than incriminate themselves, they had offered false, exculpatory explanations. The judge further found that the invitation to cooperate in the process of protecting the public was not an impermissible inducement. Finally, he concluded that the administration of the new-style caution did not pressure the defendants into providing any element of their various defences.

62. The judge set out in detail the approach he had adopted to the exercise of his discretion whether to exclude the evidence. In particular, he had given full weight to the principle that access to legal advice before and during questioning was one of the most fundamental rights that should only be denied on reasonable grounds in particular cases; and he had taken into consideration the fact that the environment in which the applicants were held was not in any true sense coercive and that the questioning was neither oppressive nor unfair. While he accepted that the erroneous administration of the new-style caution involved a level of indirect compulsion, this was not, in his view, decisive: the choice for the applicants was an easy one and they had not been "induced" by the caution to incriminate themselves but had instead told deliberate, exculpatory lies. He also noted that the evidence of the safety interviews was potentially of high relevance to the central

question raised in the trial, namely whether the defences now advanced were possibly true.

63. As regards Mr Omar's safety interviews, the judge observed that, in answering the questions designed to protect the public, Mr Omar had volunteered a very large amount of misleading information. He had not incriminated himself at any stage, but had instead told extensive exculpatory lies. The judge considered it clear that the police officers had concentrated throughout on issues that might have revealed information relevant to assisting them to locate people or items that could pose a danger to the public. He noted that there was no suggestion that the police had exceeded the requirements of what was necessary and that it was acknowledged that the lines of questioning were relevant to public safety issues.

64. The judge found that Mr Omar had been denied access to a solicitor for a little over eight hours. The safety interviews had been conducted expeditiously and as soon as they were completed Mr Omar had been given access to a solicitor. The interviews were neither coercive nor oppressive, as accepted by Mr Omar's counsel. Although a breach of the applicable code of practice had occurred when the new-style caution was administered at the beginning of safety interview C, that had not affected his attitude to the questioning. He had continued telling lies consistent with what he had said in safety interviews A and B.

65. As regards Mr Ibrahim, having reviewed the evidence showing the times and locations of the various interviews and consultations taking place at the police station, the judge accepted "unhesitatingly" that it would have been impractical for a telephone conversation between the solicitor and Mr Ibrahim to have been arranged at the time of her telephone calls (see paragraphs 34-35 above). He observed that at the relevant time there had been eighteen detainees at the police station, all arrested for suspected involvement in the events of 21 July 2005. The police station had been exceptionally busy and the conference rooms had been prioritised for face-to-face consultations; it would not have been a realistic option to leave a room free with a telephone socket for telephone conversations with lawyers. The judge noted that the police had accepted that there had been a breakdown in communication in that the interviewing officers had not been told that Mr Ibrahim's solicitor was trying to speak with him on the telephone.

66. The judge further held that it would have been impractical for Mr Ibrahim to have spoken to a solicitor before the booking-in procedures were completed at 4.42 p.m. Although there was, in theory, time for a face-to-face conference between 6.10 p.m., when the safety interview was authorised, and 7.58 p.m., when it commenced, the judge considered that, in light of the pressure under which the police were working, it was wholly understandable that no officer had appreciated that there was time to ask the duty solicitor to attend for a meeting with Mr Ibrahim before the safety

interview commenced. However, the judge was of the view that it should have been possible, between 5 p.m. and 7.58 p.m., to ensure that the duty solicitor was given access to Mr Ibrahim by telephone and accordingly concluded that, to this limited extent, he was incorrectly denied access to legal advice by telephone. However, he considered that this error did not involve a material infringement of his defence rights, noting:

> "145. ... [T]his infringement of his rights was of low significance: it would have been impossible for [the duty solicitor], in speaking to Ibrahim for the first time over the telephone, to give detailed and informed advice in those circumstances, and she would have been unable to provide material assistance on the decision which he had to take. Although for this defendant the choice was a straightforward one, [the duty solicitor] would have needed to understand the entirety of the main background circumstances before she could give advice that would have been useful to Ibrahim as regards the options confronting him. She could have advised him of his rights, but save for any issues arising out of the misuse of the new-style caution, his core rights had already been made clear to him: he was entitled to legal advice (which had been delayed for public safety reasons); he was entitled to remain silent; and anything he did say may be given in evidence against him. There is no suggestion that he did not understand these straightforward matters."

67. The judge considered that the erroneous use of the new-style caution was a straightforward and wholly understandable oversight on the part of the officers conducting the interview, given the pressure under which they were operating. He noted that the safety interview was short; that it was not suggested that it had been conducted coercively; and that the questions did not go beyond legitimate questioning for safety purposes. The judge examined the transcript of the safety interview conducted and noted that Mr Ibrahim had consistently denied having knowledge of any planned future attacks or hidden explosives. Mr Ibrahim had seen a lawyer around seven and a half hours after his first request to see one.

68. In respect of Mr Mohammed, the judge found that legal advice had been delayed for about four hours, during which time eight minutes of questioning had taken place. There was no suggestion that the interview had been held in coercive circumstances. Aside from the administration of the new-style caution, there was no evidence of any pressure having been applied. The judge was sure that the interview had not exceeded the legitimate bounds or purpose of a safety interview and had been, on the contrary, focused and appropriate.

69. The judge therefore concluded that there had been no material infringement of the right of any of the applicants to exercise their defence rights and that the interviews were admissible in their entirety.

(b) The other prosecution evidence

70. The main issue at trial was whether the failure of the devices to explode was an intentional design flaw (in which case the applicants could not be guilty of conspiracy to murder) or a mistake in the construction of the

devices. The prosecution relied heavily on the applicants' answers in their safety interviews to undermine their defence that the events of 21 July were intended as a hoax.

71. The prosecution also led evidence that the men had extremist views. They relied on extremist material found at the residences of Mr Omar and Mr Osman (of beheadings and other atrocities); evidence that the first three applicants and Mr Osman had attended a training camp in the Lake District and that Mr Ibrahim had travelled abroad on jihad; and evidence that Mr Omar had tried to convince an outsider to the group of the legitimacy of suicide bombings and other terrorist activity and, on another occasion, had shouted at an imam who had condemned suicide bombings. Also introduced as evidence were jottings referring to martyrdom on the same pad of paper that had been used to note the amount of materials supposed to go into each bomb.

72. The prosecution further relied on evidence as to the purchase of the material for the bombs and their preparation. They established that, between 28 April and 5 July 2005, 443 litres of liquid hydrogen peroxide at a low concentration had been purchased from three shops in north London in a total of 284 containers by Mr Asiedu, Mr Ibrahim and Mr Omar. There was evidence that they had initially requested liquid hydrogen peroxide at a much higher strength at or near the strength necessary to enable explosion and that they had boiled the hydrogen peroxide to increase its concentration. A number of the empty bottles later recovered had handwritten numerical markings on them, which the prosecution contended was proof that the defendants believed that the requisite concentration for explosion had been reached. A rota showed over 200 hours' work boiling the hydrogen peroxide.

73. Scientific evidence was also led as to the construction of the bombs, which had been put in rucksacks adapted for the purpose. The detonator was encased in paper from an A4 pad. Shrapnel had been added to the devices, which would have increased fragmentation upon explosion and maximised the possibility of injury. Both prosecution and defence experts agreed that the bombs were not viable. The prosecution's expert explained that this was because the hydrogen peroxide had not reached the necessary concentration required for explosion. He noted that it would have been difficult for those constructing the bombs to have measured the strength of the hydrogen peroxide but pointed out that, if the purpose had only been an hoax, no increase in hydrogen peroxide concentration would have been necessary: at the initial low concentration or with a banger inserted into the mix, the same impression of noise would have been produced. In response to the defence claim that the hydrogen peroxide had been concentrated and then diluted again with tap water (see paragraph 77 below), analysis of the isotope composition of London tap water showed that this was not possible.

74. The prosecution also referred to telephone and CCTV evidence of extensive contacts between the men primarily before, but also after, 21 July 2005.

75. A farewell letter written by Mr Mohammed, which the prosecution alleged was a suicide note, was also admitted in evidence. It was alleged to have come from the same pad of paper as had been used for encasing the detonator in the bombs. A witness gave evidence that he had received the letter on 21 July 2005 from Mr Mohammed's brother and had been asked to pass it on to Mr Mohammed's partner.

76. The jury also heard evidence from passengers on the trains where three of the bombs had been detonated. One gave evidence of Mr Mohammed mumbling nervously to himself on the platform, another of him shouting "this is wrong, this is wrong" after the detonation of his bomb, still others of his look of surprise, confusion and panic afterwards. In respect of Mr Omar, passengers gave evidence of his surprise and fear. Two witnesses he encountered during his escape gave evidence that he had asked them for help and had told them he had been injured in a bomb attack or explosion. In respect of Mr Ibrahim, the bus driver who had been in charge of the bus on which Mr Ibrahim's detonation took place gave evidence of Mr Ibrahim's nervousness in boarding the bus.

(c) The defence evidence

77. The applicants gave evidence to the effect that their actions were intended as a hoax. They had initially planned to leave the bombs unattended in public to make a point about the Iraq war. After the events of 7 July, the plan changed to detonating the bombs but not the main charge of hydrogen peroxide. To this end, they maintained that, although they had tried to concentrate the hydrogen peroxide by boiling it, they had then watered it down so that it would no longer be at the necessary concentration for an explosion. Mr Ibrahim gave evidence that he had not intended to detonate his bomb on the bus; it had gone off accidentally as he felt for the battery in order to try and remove it. Mr Mohammed explained his farewell letter saying that it had in fact been written on 23 July after the shooting of the man mistaken for one of the suspects (see paragraph 11 above) because he thought that he too would be shot by the police. It was pure coincidence that it was written on the same pad as that used for the detonator.

78. Like the first three applicants, Mr Asiedu's case prior to trial was that the events of 21 July 2005 were a hoax. However, after Mr Ibrahim had given evidence, Mr Asiedu gave oral evidence and changed his previous position. He claimed to have learned on the morning of 21 July 2005 that the devices were real bombs. He was too confused and frightened to refuse the device that was handed to him but, in accepting it, he did not intend to join or play any part in the conspiracy.

(d) The summing-up

79. During his summing up to the jury, the judge gave the following direction in respect of the statements made in the safety interviews:

> "What about the lies, members of the jury, told by some defendants to the police? It is admitted that the defendants Ibrahim, Asiedu, Omar and Mohamed lied to the police in different ways during their interviews. ... [B]efore you even begin to take any lies into consideration, you must pay careful attention to the circumstances in which the lies were told and those circumstances vary between the defendants.
>
> First, you will recall that because of the exceptional circumstances that existed in July 2005 safety interviews were authorised in the cases of Ibrahim, Omar and Mohamed. That meant that those defendants were questioned in an attempt to preserve the safety of the public before they had the opportunity of consulting with a solicitor. It is not alleged by anyone that legal advice was denied by the officers as a result of bad faith or dishonesty. However, access to legal advice prior to interview is a right that is usually afforded to a suspect and you should take into consideration that this did not happen. For instance, a solicitor may have advised the defendant in question to remain silent or they may have reminded the defendant that he should tell the truth and that there may be consequences if he lied. Therefore, when considering whether to hold any lie told by those three defendants during a safety interview against them, remember that this safeguard with these safety interviews was withheld."

80. The judge also directed the jury to bear in mind that incorrect cautions had been used. He explained:

> "As a result, it was confused and potentially confusing for all three defendants. The new-style caution that was administered may have put inappropriate pressure on them to speak. When considering whether or not to hold any lie told by a defendant during a safety interview against him, take into account, therefore, that unsatisfactory history as regards the use of the caution.
>
> However, as regards the use of the new-style caution, you are also entitled to bear in mind that none of these three defendants were in fact pressurised into revealing anything that they have later relied on in this trial. To the contrary, on all or most material issues they lied."

81. In respect of those lies, the judge observed:

> "In addition, for Ibrahim, Asiedu, Omar, Osman and Mohammed when assessing lies they told whilst in police custody, whether in a safety interview or otherwise, you should consider two further questions: on the particular issue you are considering, you must decide whether the defendant you are considering did in fact deliberately tell lies. If you are not sure he did, ignore this matter on that issue. If you are sure, consider why did the defendant lie on that issue. The mere fact that a defendant tells a lie is not in itself evidence of guilt. A defendant may lie for many reasons and they may possibly be innocent ones in the sense that they do not denote guilt. It is suggested here that lies were told for a variety of reasons: out of fear of admitting a degree of involvement or knowledge but which the defendant says falls short of his being a conspirator, that is Asiedu; to protect others who they feared would be falsely accused and might be killed or injured as a result; out of fear of admitting involvement, as they claim, in a hoax attack, or out of panic, distress, confusion, or from fear of being assaulted.

> If you think that there is, or may be, an innocent explanation for the lies told by the defendant you are considering, then you should take no notice of them. It is only if you are sure that he did not lie for an innocent reason that his lies can be regarded by you as evidence supporting the prosecution case, subject to the other directions I have just given you on this issue relating to the safety interviews."

82. Concerning the failure of the applicants to mention the defence led at trial during the safety interviews, the judge directed as follows:

> "Let us turn then to the failure of the defendants to answer questions in interview. The first matter to stress is that you must not hold it against Ibrahim, Omar and Mohammed that they failed to mention during the safety interviews matters which they later relied on in court. That is because, as I have just explained to you, access to a lawyer had been denied at that stage and the law is that in those circumstances a defendant is not to be criticised for failing to mention matters that later form part of his defence. Of course it follows from the direction I have just given you about lies that if instead of remaining silent they told lies, you are entitled to take those untruths into account, subject always to the matters I have just directed you to take into account.
>
> ...
>
> [M]y clear direction to you is that you must not hold it against Ibrahim, Omar and Mohammed that they failed to mention during the safety interviews matters which they later have relied on in this court."

83. For the later interviews that took place after the applicants had seen their legal representatives and had received the new-style caution, the trial judge directed the jury that the applicants had failed to give an account of three matters that they relied on at trial, even though they had been asked questions about them in interview: (i) the true events leading up to 21 July 2005; (ii) their knowledge individually of and association with their co-accused; and (iii) their true state of mind, purpose and intention in relation to the deployment of the bombs. He explained that the failure to mention these matters during the interviews which took place after they had received legal advice could be held against them.

(e) The verdicts and sentences

84. On 9 July 2007 the jury convicted the first three applicants and Mr Osman of conspiracy to murder. The jury were unable to reach verdicts in respect of the other two defendants and a re-trial in their cases was ordered. They subsequently pleaded guilty to lesser charges.

85. On 11 July 2007 the first three applicants were sentenced to life imprisonment with a minimum term of forty years' imprisonment.

3. The appeal of the first three applicants

86. The applicants sought leave to appeal against their convictions. They argued *inter alia* that the trial judge had erred in his ruling admitting the evidence of the safety interviews.

87. On 23 April 2008 the Court of Appeal refused leave to appeal against conviction.

88. Setting out the background to the applicants' arrest and questing, the court observed:

> "5. ... It is virtually impossible to imagine the pressure and concerns which must have been felt by the police investigating teams. Two weeks earlier four bombs had been successfully detonated with the dreadful consequences with which we are familiar, and they were now faced with four more bombs, again in the transport system, which had been detonated, but failed to explode. The bombers involved on 7th July had perished, but the perpetrators of the second intended atrocity were at large, free to repeat their murderous plans, and to do so more effectively. They had to be found and detained, and the immediate objective of the investigation, including interviews of those arrested in connection with these incidents, was directed to public safety."

89. The Court of Appeal expressed, at the outset of its judgment, the following, general conclusion as to the nature and conduct of the trial:

> "7. It is axiomatic that every defendant, even a defendant alleged to be involved in direct and dangerous violence on the citizens and institutions of this country, is entitled to a fair trial at which his guilt must be proved. This trial was marked with conspicuous fairness and commanding judicial control by Mr Justice Fulford. The defendants were represented at public expense by leading counsel of distinction and experience, with absolute clarity about their professional responsibilities both to their clients, and to the court. The jury's difficulty in agreeing verdicts in relation to Asiedu and Yahya demonstrates that they approached the issues with the open-minded fairness and lack of prejudice which is one of the customary characteristics of the jury system. Now that the applicants have been convicted after a fair trial before an impartial tribunal, we are entitled to record, after a lengthy examination of the evidence, that their defences to the charge of conspiracy to murder were ludicrous."

90. In respect of the applicants' defence, the Court of Appeal made the following observation:

> "17. If these were hoax bombs we find it hard to conceive why it was necessary for the peroxide to be boiled in order to increase its concentration, or why both Asiedu and Yahya, independently, when buying hydrogen peroxide asked for it to be supplied at [a much higher] strength, or the highest available percentage. Equally, it is astonishing to imagine why nearly 100 gallons of hydrogen peroxide was needed unless its purpose was to increase its strength. The handwritten figures ... on 36 bottles made devastating evidence. Each one demonstrated that the manufacturers of the bombs believed that they had in fact achieved the critical concentration necessary to ensure that the bombs exploded. Indeed a significant part of the trial was taken up by the efforts by applicants to explain away this crucial evidence. In very brief summary it was contended that after the concentration in the hydrogen peroxide had been increased, it was then watered down. Moreover it is difficult to understand how any political point, if that was all that was sought to be made, could be improved by the incorporation of shrapnel within the bomb. The shrapnel was intended to cause death and maiming. There could be no other purpose. And if this expedition were intended as a hoax or a political demonstration, there was a remarkable silence from the applicants themselves after they had made their escapes. If their objective was a hoax, half a moment's attention to the outpouring of the news about the unsuccessful bombings would have demonstrated that their objective had been achieved. Yet no

such assertion or claim or explanation was given or offered to the police or the media or the public before any of the applicants was arrested."

91. As to the impact of the admission of the safety interviews, the court observed:

"20. ... At this stage we simply record that if the records of the police interviews were properly admitted, they were sufficient, on their own, utterly to undermine the 'hoax' defence."

92. The court was of the view that an interview process which, so far as possible, enabled the police to protect the public was a necessary imperative. It considered that the question whether the results of such interviews should be used as evidence against the suspects was delicate. However, it emphasised that none of the applicants had said anything which directly incriminated them, or involved any confession to participation in, or even remote knowledge of, the conspiracy to murder on 21 July. It also found that there was a risk of attaching disproportionate importance to this particular feature of the evidence in the case. Nevertheless, it noted, the interviews provided important evidence against the applicants, not because they told the truth and revealed knowledge of or involvement in terrorist activity, but because they had made a number of demonstrably untrue assertions without suggesting the defences that they later advanced at trial.

93. The court accepted that, owing to police error, incorrect cautions had been administered to the applicants before they told the lies in question. However, it emphasised that each of the men had been warned that the answers given in the safety interviews might be used in evidence against him. The court continued:

"37. ... So they were under no illusions. They did not purport to incriminate themselves at all. They chose to lie. On any view that was an important consideration in the exercise of Fulford J's discretion."

94. The court was satisfied that the exercise of discretion by the trial judge was fully informed and that he had approached the relevant issues with care.

95. As regards Mr Omar, the court noted that he was the first of the defendants to be arrested and that, as a consequence, what he might have to say was of absolutely crucial importance to the stark public safety issues which confronted the police at the time. It observed that during the *voir dire*, it was expressly accepted that the decision to hold a safety interview before Mr Omar was granted access to a lawyer was a valid decision under Schedule 8 of the Terrorism Act 2000 (see paragraphs 139 et seq. below). It was further conceded that the interviews were conducted fairly and moderately, and that they were neither coercive nor oppressive. However, during the appeal, counsel for Mr Omar had sought to argue that the police action to delay Mr Omar's access to legal advice was not lawful. The Court noted:

> "First, breaches of the relevant Code do not make subsequent police actions unlawful, at any rate in the sense that they are or would be sufficient of themselves to lead to the exclusion of the results of the subsequent interviews. When, as the judge found, the police were not seeking deliberately to manipulate the system in bad faith, he was required to address the exclusionary powers provided by section 78 of PACE: no more, no less. This leads to the second consideration, that it is always open to the defendant's advocates at trial to make a deliberate forensic decision to waive or ignore, and therefore choose not to rely on the breaches of the relevant Code, if the effect of inviting attention to them may increase rather than diminish the defendant's difficulties. In short, the trial advocate must make his own judgment whether to advance argument based on breaches of the relevant Code, or to argue some, or one, but not all of them."

96. The court could see nothing to support the conclusion that the decision to admit the evidence of the safety interviews in Mr Omar's case was flawed.

97. In respect of Mr Ibrahim, the court noted that three submissions had been advanced by his counsel. First, it had been argued that the superintendent's conclusion that a pre-interview consultation between Mr Ibrahim and the duty solicitor would cause unnecessary delay was a serious error of judgment because the safety interview had not taken place until over an hour later. Second, it had been contended that the continued questioning of Mr Ibrahim after he had denied knowing anything constituted a breach of the applicable code, paragraph 6.7 (see paragraph 146 below). Finally, it had been submitted that the administration of the new-style caution had contributed to the unfairness by introducing an element of coercion. The Court of Appeal explained in detail how the trial judge had approached these matters and concluded that it saw no basis for interfering with his decision that the statements made during safety interviews should be admitted.

98. As regards Mr Mohammed, the court noted that the trial judge had accepted that the wrong caution had been given and that access to legal advice had been delayed for almost four hours. However, he had been confident that the interview had been a genuine safety interview, observing that it had lasted eight minutes and had not been held in coercive conditions. The court could see no basis for interfering with the decision that the admission of the evidence did not render the trial unfair.

C. The case of the fourth applicant

1. Events leading to the fourth applicant's questioning by the police

99. The fourth applicant was a friend of Mr Osman, having been introduced to him by Mr Osman's brother, Mr Abdul Sherif, in around 1999. On 23 July 2005, two days after the attempted bombings, the fourth applicant bumped into Mr Osman at Clapham Junction train station as the former was getting on a train home. The two men returned together to the

fourth applicant's home. Mr Osman then stayed with the fourth applicant until 26 July.

100. Meanwhile, on the afternoon of 25 July a surveillance camera was filming the entrance to the fourth applicant's block of flats. The camera subsequently zoomed in on the fourth applicant and his flat. At 6 p.m., an undercover surveillance officer was deployed in the vicinity of the fourth applicant's home. On the morning of 26 July, officers observed the fourth applicant and a man later identified as Mr Osman leaving the address. The fourth applicant accompanied Mr Osman to a bus stop, where Mr Osman caught a bus to Waterloo train station. The fourth applicant returned home.

101. On the morning of 27 July the fourth applicant went to work. When he was returning from work at around 5.30 p.m., he was approached by two police officers who sought his assistance as a potential witness in the investigation. He agreed to assist them and accompanied them to Kennington Police Station.

2. The police interviews

(a) The interviews as a witness

102. The police officers began interviewing the fourth applicant at 6.15 p.m. By about 7.15 p.m. the officers considered that, as a result of the answers he was giving, the fourth applicant was in danger of incriminating himself and should be cautioned and informed of his right to legal advice. They sought instructions from a senior officer in charge of the investigation. They were told that they should continue to interview the fourth applicant as a witness and accordingly did so.

103. At about 12.10 a.m. on 28 July, the fourth applicant was taken with the two police officers to point out an address where he believed Mr Osman lived.

104. Between 1.30 a.m. and 5 a.m. on 28 July, at the police station, a witness statement was taken from the fourth applicant.

(b) The witness statement

105. In the statement, the fourth applicant recounted how he had become friends with Mr Osman in around 1999 but had lost contact with him the following year. He stated that, on 23 July 2005, Mr Osman had come running up to him at Clapham Junction railway station as he was about to board a train, and the two men had greeted each other as old friends. They had boarded the same train to Vauxhall and at the fourth applicant's stop, Mr Osman had decided to alight with him on the pretext of wishing to speak about something. As they walked towards the fourth applicant's home, Mr Osman had told the fourth applicant that he was in trouble with the police. He claimed to have stolen some money and to have escaped from police custody. When they arrived at the fourth applicant's flat, Mr Osman

had asked him to put on the television, and together they had watched a report of the attempted bombings which showed photographs of the men sought by the police. Mr Osman had then said that he knew the men and that they were good men. When the photograph of a fourth man sought in connection with the attacks appeared on screen, Mr Osman had pointed at the screen and said, "that's me". At first the fourth applicant had not believed him since the photograph did not resemble Mr Osman. But as Mr Osman had continued to discuss the justification for the attacks, the fourth applicant had begun to realise that he was telling the truth. He had become frightened and had wanted Mr Osman out of his home. Mr Osman had then asked to stay with the fourth applicant for two nights and, fearing for his personal safety if he refused, the fourth applicant had acceded to the request.

106. The witness statement also described an injury to Mr Osman's thigh, which he had said was incurred while escaping after his bomb had failed to explode. Mr Osman had also explained how he had pressed the button to activate his bomb but nothing had happened. He had given details of his escape from the underground train and his movements over the next two days, when he had gone to stay with a friend in Brighton who had lent him a car. He had shown the fourth applicant photographs of the other bombers in a national newspaper which he had brought with him and revealed their names. The fourth applicant was shown a number of photographs by the police and confirmed the identity of three of the males photographed according to the information provided by Mr Osman. The fourth applicant also explained that Mr Osman had mentioned a fifth bomber who had not detonated his bomb; the fourth applicant did not know the identity of this person. The fourth applicant explained that Mr Osman had made a few calls from his mobile phone, but had spoken in Eritrean.

107. The next day, conversation with Mr Osman had been limited. However, he had told the fourth applicant how the bombers had prepared their bombs and had given him details of videos the group had recorded prior to the bombings, in which they had explained their actions. Mr Osman had made another call on his mobile in the afternoon. He had gone out briefly later that night and had returned with cash. He had asked to borrow clothes and the fourth applicant had indicated that he should help himself.

108. On the morning of 26 July Mr Osman had packed a bag and told the fourth applicant that he was going to catch a train to Paris from Waterloo train station. He had left for the station at around 8 a.m. and about an hour later had called the fourth applicant to say that he was on a train. The fourth applicant had then switched off his mobile telephone so that Mr Osman could not contact him any further.

109. The fourth applicant described Mr Osman's wife and recorded the fact that he had taken police officers to a block of flats where he believed that Mr Osman and his wife lived. He concluded the witness statement by

emphasising that it had been a chance meeting at Clapham Junction and that he had not taken part in any arrangement to assist or harbour Mr Osman. He said that he had only let Mr Osman stay because he had been afraid.

(c) The interviews and statements as a suspect

110. After the witness statement had been signed, one of the officers telephoned his superiors to seek further advice and was told to arrest the applicant. The fourth applicant was then arrested and cautioned. He was asked whether he wanted the services of a solicitor at that time but declined saying, "No, maybe after interview if it gets serious".

111. On 30 July, after having sought legal advice, the fourth applicant was interviewed as a suspect in the presence of his solicitor. He made no comment to almost all the questions he was asked. His solicitor indicated that he wished to read a prepared statement in response to the disclosure received. In the prepared statement, the fourth applicant confirmed that he had had no prior knowledge of the events of 21 July and deplored them. He had been stopped by the police on 27 July and had agreed to assist them in every possible way; in this respect, he referred to his witness statement of 28 July. He corrected the witness statement in so far as it related to the physical description he had given of Mr Osman. Finally, he emphasised that the CCTV image of Mr Osman shown on television had been unrecognisable and that, when Mr Osman had claimed to have participated in the attempted bombings, he had not believed him.

112. On 1 August the fourth applicant was interviewed a second time. He again declined to answer questions but insisted that he had been assisting the police from the beginning and did not wish to make any further statements. He was interviewed further on 2 August and repeated that he was not and never would be a terrorist and had not played any part in what had happened. In his last interview, on 3 August, he said that everything he knew was contained in his original witness statement. The fourth applicant was charged at 2.20 p.m. on 3 August 2005.

3. The fourth applicant's trial

(a) The prosecution case

113. The fourth applicant was tried with four other men, including Mr Sherif, at the Crown Court at Kingston before HHJ Worsley QC and a jury. He was accused of assisting Mr Osman and failing to disclose information after the bombings. The prosecution case was that he had been prepared to give Mr Osman shelter even though he had known that Mr Osman had been involved in the attacks. The prosecution also alleged that the fourth applicant had collected Mr Sherif's passport from him and given it to Mr Osman. Finally, it was alleged that the fourth applicant had also collected a video camera which had been used to film suicide messages

by the would-be bombers, and had given it to Mr Osman. The suicide messages have never been recovered.

(b) The admissibility of the witness statement

114. The fourth applicant applied to have the witness statement excluded, relying on four matters. First, that the statement had been taken in breach of the applicable code of practice, in particular because he had not been cautioned or informed of his entitlement to free legal advice. Second, that the breach had been deliberate. Third, that he had been induced to make the statement on the pretence that he was a witness and would be free to go home after the statement was completed. Fourth, that the statement had been taken in the early hours of the morning, when he was tired. As a result of all of these matters, the fourth applicant submitted, the statement was a confession made by him in circumstances likely to render it unreliable pursuant to section 76(2) of PACE. Alternatively, he submitted that it ought to be excluded pursuant to the general discretion to exclude evidence under section 78 of the same Act (see paragraphs 152 and 154 below).

115. The prosecution opposed the application but accepted that the witness statement amounted to a confession for the purposes of section 76 of PACE. The prosecution also accepted that there had been a breach of the relevant code of practice in failing to caution the fourth applicant or offer him the services of a solicitor when the two police officers had come to the conclusion that they should take instructions from their superiors.

116. At the *voir dire*, the two police officers gave evidence that, when they first approached the fourth applicant on the afternoon of 27 July, it was with a view to his assisting the police as a potential witness. It was also accepted by the parties that, at that stage, the police officers did not have sufficient information to justify arresting the fourth applicant, or treating him as a suspect. One of the officers explained that by 7.15 p.m. he had taken the view that, as a result of the answers that the fourth applicant was giving, he was in danger of incriminating himself and should be cautioned and informed of his right to legal advice. The officers had accordingly sought instructions from one of the senior officers in charge of the investigation. They had been told that they should continue to interview the fourth applicant as a witness and had therefore done so. In his evidence one of the officers expressed surprise that, when the witness statement was completed, he had been instructed to arrest the applicant.

117. On 3 October 2007 the trial judge refused the fourth applicant's application to have the witness statement excluded. He accepted that at the time when the fourth applicant had arrived at the police station there had been no reasonable objective grounds to suspect him of any offence and that it was entirely appropriate to treat him as a witness. However, in view of the prosecution concession that reasonable objective grounds to suspect the fourth applicant of an offence could be said to have crystallised by the

conclusion of his first oral account, the judge was satisfied that there had been a breach of the applicable code at the time when the fourth applicant had made his written witness statement.

118. The trial judge found as a fact that there was no evidence of oppression of the fourth applicant while he was at the police station. Nor, the judge said, was anything said or done by the police officers that could have rendered the witness statement unreliable. He pointed out that the fourth applicant had "freely adopted" the witness statement after he had been cautioned and had received legal advice. He therefore did not accept that the statement should be excluded under either section 76 or section 78 PACE.

119. Finally, the judge referred to the right of the defence to put matters concerning the fourth applicant's challenge to the witness statement before the jury. The jury would be directed appropriately on the question of reliability. In the circumstances no breach of Article 6 § 3 arose.

120. The defence subsequently made an application to have excluded those parts of the witness statement which the fourth applicant had withdrawn or qualified in his subsequent interviews. These parts concerned the physical description given of Mr Osman and statements which indicated that the fourth applicant had come to believe that Mr Osman was involved in the attacks. The application was opposed by the prosecution, because the qualifications later made demonstrated the detail in which the fourth applicant had subsequently considered his witness statement. The application was refused, the trial judge finding that exclusion of the passages would be misleading to the jury. He explained that the jury would be able to hear the full circumstances in which the fourth applicant had come to adopt the witness statement.

(c) The other prosecution evidence

121. The other prosecution evidence led at trial against the fourth applicant included:

(i) CCTV footage from 23 July showing the fourth applicant and Mr Osman together at Clapham Junction railway station, at Vauxhall railway station and walking towards the fourth applicant's flat;

(ii) mobile telephone cellsite analysis (analysis showing where mobile telephone calls have been made), consistent with Mr Osman having made telephone calls at the fourth applicant's flat;

(iii) CCTV footage showing the fourth applicant meeting one of his co-defendants and collecting from him the camera alleged to have been used to film martyrdom videos made by the bombers;

(iv) cellsite analysis consistent with the fourth applicant having met Mr Sherif to collect the passport for Mr Osman;

(v) footage from a police surveillance camera showing Mr Osman leaving the fourth applicant's flat on 26 July en route to Waterloo station;

(vi) a newspaper report on the attempted bombings, with pictures of the bombers (including Mr Osman), found in the fourth applicant's flat with his fingerprints on it;

(vii) telephone contact between the fourth applicant and Mr Osman after the latter had taken the Eurostar from Waterloo, indicating that Mr Osman had spoken to the fourth applicant twice by mobile telephone on 26 July and had twice attempted to telephone him on 27 July from Italy;

(viii) The fourth applicant's police interviews of 30 July and 1 August in which he admitted that Mr Osman had stayed at his flat and stated that the contents of his 28 July witness statement were accurate (see paragraphs 111-112 above).

(d) The application for a stay on grounds of abuse of process

122. At the conclusion of the prosecution case, the fourth applicant made an application to have the proceedings stayed on the grounds that the prosecution was an abuse of process. He argued that the order given to the police officers to continue to treat him as a witness, and not a suspect, meant he had been tricked into giving his witness statement. He had effectively been told that he would not be prosecuted. In other words, later treating him as a suspect and prosecuting him was inherently unfair.

123. On 5 November 2007 the judge refused the application. He held that it would only be an abuse of process to prosecute someone who had received an unequivocal representation that he would not be prosecuted and had acted on that representation to his detriment. No such unequivocal representation had been made to the fourth applicant. Even if he had thought that there had been such a representation, he had not acted on it to his detriment. The evidence had to be looked at as a whole: once cautioned and provided with legal advice the fourth applicant had had the opportunity to say that the witness statement was untrue, inaccurate or given at a time when he was so tired that it was unreliable. However, he had chosen not to do so. Instead, throughout the proceedings he had adopted that witness statement; indeed, "to this day" he had effectively adopted what he had previously told the police. He had given his detailed comments on the statement when he was a suspect. The judge found that far from being an affront to justice for the case to continue, it would be an affront to justice for the case not to continue.

(e) The trial proceedings and verdict

124. The fourth applicant did not give evidence at trial. His defence was based upon the witness statement of 28 July 2005.

125. Mr Osman was called to give evidence by Mr Sherif. During cross-examination Mr Osman confirmed the account given by the fourth applicant in his witness statement, notably that he had sheltered at the fourth applicant's flat. Mr Sherif confirmed that he had provided the passport for

Mr Osman's travel. He accepted that from phone calls with Mr Osman and from what he had been told by the fourth applicant, he knew that the police were looking for Mr Osman.

126. On 21 February 2008, the fourth applicant was convicted and sentenced to a total of ten years' imprisonment. Four of the fourth applicant's co-accused, including Mr Sherif, were also convicted.

4. The fourth applicant's appeal

127. The fourth applicant and a number of his co-defendants appealed against conviction and sentence to the Court of Appeal. The fourth applicant argued that the trial judge had been wrong to admit the witness statement.

128. On 21 November 2008 the Court of Appeal dismissed the appeal against conviction. It expressed some concern about events at the police station but considered that the trial judge had not erred in admitting the impugned witness statement. Concerning the fact that the statement had been made in breach of the applicable code, the court said:

> "38. The way the police behaved is undoubtedly troubling. The decision not to arrest and caution [the fourth applicant] when the officers interviewing him believed that they had material which gave them reasonable grounds for suspecting that he had committed an offence was a clear and deliberate instruction to ignore the Code. But at that stage the police dilemma is understandable. [The fourth applicant] was providing information about Osman which could have been of critical importance in securing his arrest, which was the priority at that time. It seems to us that the judge was entitled to come to the conclusion that the prosecution had established that nothing was said or done which could undermine the reliability of the witness statement. He was entitled to take into account the fact that in the prepared statement he made after caution he asserted that he was seeking to give assistance to the police. That was repeated in the later interviews. He said nothing therefore to suggest that the circumstances were such as to render it likely that what he said was not reliable. It seems to us, therefore, that the judge was also entitled to conclude from all material that [the fourth applicant] with the help of legal advice, was repeating, subject as we have said to some corrections, what was in the witness statement as his account of the part such as it was, that he played in relation to Osman in the days after 21st July. Further, given the [fourth applicant's] adoption of that witness statement, we do not consider that the judge's decision to permit the statement to go before the jury in the exercise of his discretion under s. 78 of the Act can be said to be perverse or affected by any error of law."

129. As to the refusal of the trial judge to stay the trial on grounds of abuse of process, the Court of Appeal explained:

> "39. ... The main thrust of the argument on [the fourth applicant's] behalf is that to prosecute on the basis of a statement that he gave when being treated as a witness is quite simply unfair. He was, it is said, effectively being told that he would not be prosecuted and gave assistance accordingly. The judge in our view rightly rejected this argument. There was no evidence that [the fourth applicant] made his statement because he believed he was not going to be prosecuted. He gave no evidence to that effect; and there is nothing in the interviews after he was arrested to suggest that that was the reason for his having made the witness statement. On the contrary, he made

> the witness statement because he wanted to assist the police. In this type of case, the court is only likely to conclude there has been an abuse of process if a defendant can establish that there has been an unequivocal representation by those responsible for the conduct of the prosecution and that the defendant has acted to his detriment: see *R v Abu Hamza* [2007] 1 Cr App R 27, [2006] EWCA Crim 2918, in particular at paragraph 54. That was not the situation here."

130. Describing the general relevance of an appellant's personal circumstances to the sentence imposed, the court acknowledged that youth or vulnerability might be pertinent, but emphasised that this was not the case in respect of most of the appellants before it, including the fourth applicant. The court noted that the appellants had acted without any regard whatsoever to their public duty, and continued:

> "None except [the fourth applicant] made any disclosure at all until they were arrested ..."

131. In conclusion, the Court of Appeal partly allowed the fourth applicant's appeal against sentence, on account of the help he had given to the police:

> "47. The assistance that [the fourth applicant] gave to Osman was of the utmost significance. We conclude, however, that we can and should reflect the fact that, albeit only after he had been seen by the police, he gave at least some help and information ..."

132. The court therefore reduced the total sentence to one of eight years' imprisonment. In dealing with Mr Sherif's appeal against sentence, the court noted the critical role the latter had played in enabling Mr Osman's escape and considered that it justified "a very severe sentence which cannot be mitigated as it was in the case of [the fourth applicant] by his giving any information at any stage to the police".

133. On 3 February 2009 it refused to certify a question of general public importance for the consideration of the House of Lords.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Cautions

134. Section 66 PACE requires the Secretary of State to issue a code of practice, *inter alia* on the detention, treatment and questioning of persons by police officers. The applicable code of practice is Code C. Section 10 of Code C concerns cautions and at the relevant time paragraph 10.1 provided:

> "A person whom there are grounds to suspect of an offence must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution."

135. Prior to the enactment of the Criminal Justice and Public Order Act 1994, the wording of a caution (commonly referred to as the old-style caution) was:

> "You do not have to say anything, but anything you do say may be given in evidence."

136. Section 34 of the Criminal Justice and Public Order Act 1994 permits adverse inferences to be drawn by a jury where a defendant fails to mention during police questioning any fact relied on in his defence in subsequent criminal proceedings. The precise circumstances in which such adverse inferences can be drawn are normally explained to the jury in detail in the trial judge's summing up.

137. The wording of the caution that has been routinely given since the entry into force of the 1994 Act (commonly referred to as the new-style caution) is contained in paragraph 10.5 of Code C and is as follows:

> "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."

138. Pursuant to section 34(2A) of the 1994 Act, adverse inferences cannot be drawn at trial if the defendant was not allowed an opportunity to consult a solicitor prior to being questioned.

B. Safety interviews

1. The Terrorism Act 2000

139. The Terrorism Act 2000 ("the 2000 Act") governs the arrest and detention of those suspected of committing terrorist offences. Section 41 allows a police constable to arrest without a warrant a person whom he reasonably suspects to be a terrorist. In the case of an arrest under section 41, the provisions of Schedule 8, which address *inter alia* access to legal advice, apply. The law cited below sets out the position at the material time; amendments which are not significant in the present cases have since been made to the relevant provisions.

140. Paragraph 6 of Schedule 8 set out the right of a detainee, if he so requested, to have one named person informed as soon as was reasonably practicable that he was being detained ("the right not to be held incommunicado"). This right was subject to paragraph 8.

141. Paragraph 7 provided that a person who was arrested as a suspected terrorist was entitled, if he so requested, to consult a solicitor as soon as reasonably practicable, privately and at any time ("the right to legal advice"). This right was also subject to paragraph 8.

142. Paragraph 8(1) provided that an officer of at least the rank of superintendent could authorise a delay in the entitlements set out in paragraphs 6 and 7. Pursuant to paragraph 8(2), such authorisation could be

given only if the officer had reasonable grounds for believing that the exercise of the entitlements would have any of the following consequences:

> "(a) interference with or harm to evidence of a serious arrestable offence,
>
> (b) interference with or physical injury to any person,
>
> (c) the alerting of persons who are suspected of having committed a serious (arrestable) offence but who have not been arrested for it,
>
> (d) the hindering of the recovery of property obtained as a result of a serious (arrestable) offence or in respect of which a forfeiture order could be made ...;
>
> (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism,
>
> (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism, and
>
> (g) the alerting of a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism."

143. Paragraph 8(7) provided that where authorisation was given, the detainee had to be informed of the reasons for the delay as soon as practicable and the reasons had to be recorded.

2. The relevant provisions of Code C

144. At the material time no specific codes of practice existed in relation to the above provisions. Code C (see paragraph 134 above) also covered those detained on suspicion of terrorism.

145. Section 5 of Code C dealt with the right not to be held incommunicado. Paragraphs 5.1 and 5.2 set out the general right to have a named person contacted as established in paragraph 6 of Schedule 8 to the 2000 Act and explained that the exercise of the right could only be delayed in accordance with Annex B of the Code (see paragraph 151 below).

146. Section 6 of Code C dealt with the right to legal advice. Paragraphs 6.1 and 6.5 set out the general right to legal advice as established in paragraph 7 of Schedule 8 to the 2000 Act and explained that the exercise of the right could only be delayed in accordance with Annex B of the Code.

147. Paragraph 6.6 explained that a detainee who wanted legal advice could not be interviewed until he had received such advice unless:

(a) Annex B applied; or

(b) an officer of superintendent rank or above had reasonable grounds to believe that:

(i) the consequent delay might have, *inter alia,* the consequences set out in paragraph 8 (a) to (d) of Schedule 8 to the 2000 Act (see paragraph 142 above); or

(ii) when a solicitor had been contacted and had agreed to attend, awaiting his arrival would cause unreasonable delay to the process of the investigation.

148. Paragraph 6.6 also explained that, in these cases, the restriction on drawing adverse inferences from silence would apply because the suspect had not had the opportunity to consult a solicitor. Annex C clarified that the old-style caution was to be used.

149. Paragraph 6.7 explained that once sufficient information had been obtained to avert the risk, the questioning should cease until the detainee had obtained legal advice.

150. The Notes for Guidance attached to Code C, included paragraph C:6A:

> "In considering if paragraph 6.6(b) applies, the officer should, if practicable, ask the solicitor for an estimate of how long it will take to come to the station and relate this to the time detention is permitted, the time of day ... and the requirements of other investigations. If the solicitor is on their way or is to set off immediately, it will not normally be appropriate to begin an interview before they arrive. If it appears necessary to begin an interview before the solicitor's arrival, they should be given an indication of how long the police would be able to wait before 6.6(b) applies so there is an opportunity to make arrangements for someone else to provide legal advice."

151. Part B of Annex B specifically concerned persons detained under the 2000 Act. It provided that the rights discussed in sections 5 and 6 of Code C could be delayed for up to forty-eight hours if there were reasonable grounds to believe that the exercise of the right would lead to the consequences set out in paragraph 8 of Schedule 8 of the 2000 Act (see paragraph 142 above).

C. The admissibility of evidence

152. Section 76 PACE provides:

> "(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section;
>
> (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained–
>
> (a) by oppression of the person who made it; or
>
> (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,
>
> the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid."

153. Under section 82(1) PACE a "confession" includes any statement "wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise".

154. Section 78(1) PACE provides:

> "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given, if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

THE LAW

I. JOINDER OF THE APPLICATIONS

155. The applications lodged by the first three applicants were joined in the Court's partial decision in their case of 22 May 2012 (see paragraph 7 above).

156. Given its similar factual and legal background, the Court decides that the fourth applicant's case should be joined to that of the first three applicants' pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

157. All four applicants complained that their lack of access to lawyers during their initial police questioning and the admission of the statements made in the police interviews at trial was in violation of their right to a fair trial under Article 6 §§ 1 and 3 (c) of the Convention, which reads 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. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

158. The Government contested that argument.

A. Admissibility of the four applications

159. The Court notes that the complaints made in this respect by the first three applicants are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

160. The same conclusions apply in respect of the application brought by the fourth applicant. It too must therefore declared admissible

B. Merits

1. The parties' observations concerning the first three applicants (Mr Ibrahim, Mr Mohammed and Mr Omar)

(a) The Government's submissions

161. The Government argued that the first three applicants had had a fair trial in accordance with Article 6. First, there had been compelling reasons in their cases – within the meaning of that term in *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008 – to justify the restrictions on their right of access to a solicitor. Second, their Article 6 rights had not been irretrievably prejudiced as a result of these restrictions.

162. Developing their submission on the existence of compelling reasons, the Government drew attention to the following:

- The events of 21 July came two weeks after the bombings of 7 July which had killed over fifty people. That the attacks of 21 July had not resulted in further mass murder was the result of good fortune that the bombs had been defective. The investigating authorities had been under an overwhelming imperative to detain those responsible and to protect the public from further attacks. There was a pressing need for them to establish the identities of all those responsible, their whereabouts, whether any further devices were at large and whether any further attacks were planned.

- By the time of their arrest, the applicants had been connected to the events of 21 July and could be expected to have critical information.

- The restrictions on their right of access to solicitors were authorised by senior police officers. The officers' decisions had been conveyed to all three applicants. Each of the officers had reasonable grounds for believing that granting access to a solicitor would have involved an immediate risk to the public and would have alerted other terrorist suspects.

- The safety interview questioning was limited in scope and time.

- In advance of their subsequent full police interviews the applicants had been given access to solicitors. This contrasted with the position in *John Murray v. the United Kingdom*, 8 February 1996, *Reports of Judgments and Decisions* 1996-I, and *Magee v. the United Kingdom*, no. 28135/95, ECHR 2000-VI, where access to solicitors was delayed for

longer periods and the questioning of the applicants was extensive and directed at establishing their criminality.

163. The Government further submitted that the scope of the restrictions had been clearly circumscribed by the provisions of Schedule 8 to the Terrorism Act 2000. The restrictions contained in that Act were not systematic and could only be imposed on the basis of an assessment of the particular circumstances of the individual case. All decisions had to be based on reasonable grounds. In the applicants' cases, the restriction had pursued the legitimate aims of the protection of life and property and the prevention of crime. The Convention system recognised the particular need in the terrorism context to strike a proper balance between individual rights and the exigencies involved in dealing with terrorism. The purpose of questioning without access to a solicitor was not to obtain evidence against a suspect but urgently to obtain information that would protect life and property and prevent terrorist activity. Once the basis for the restriction ceased to subsist, the restriction was no longer possible. No inference from silence could be drawn in subsequent criminal proceedings.

164. The Government submitted that the applicants' rights were not unduly prejudiced. It was highly material that they had complained about the admission of lies told in their police interviews, rather than adverse inferences from silence or admission of self-incriminating statements. The Court's statement in *Saunders v. the United Kingdom*, 17 December 1996, § 71, *Reports* 1996-VI, that the right not to incriminate oneself could not be confined to statements which were directly incriminating but also extended to exculpatory remarks, had been made in the context of statements obtained under compulsion. This was not the case here and, in any event, the applicants' statements were not merely exculpatory but also false. In the Government's submission, the right against self-incrimination operated to protect those who incriminated themselves or remained silent. It did not protect those who had deliberately and freely attempted to mislead the authorities (citing, *mutatis mutandis*, *Allen v. the United Kingdom* (dec.), no. 76574/01, ECHR 2002-VIII).

165. The Government further argued that the applicants' false statements were only one part of the prosecution case against them and were not the primary evidence. There was the evidence of their extremist views and support for suicide bombings, their construction and deployment of the bombs, the suicide note, and their going into hiding after the failed attacks. Their defence – that it was all a hoax – had been described as "ludicrous" by the Court of Appeal (see paragraph 89 above). This was not a case where, in the language of *Salduz*, incriminating statements made during police interrogation without access to a lawyer were used for a conviction.

166. It was further important that the applicants' rights had been properly protected by the adversarial nature of the domestic criminal proceedings. At trial, they had been given a proper opportunity to challenge

the admission of their statements. Their present complaints were, in effect, an invitation to the Court to go behind the trial judge's ruling (confirmed by the Court of Appeal) allowing the statements to be admitted.

167. Finally, the administration of the incorrect caution to the applicants did not cause any unfairness. They had been warned that they did not have to say anything but that anything they said could be used in evidence. The caution used did not cause the applicants to incriminate themselves: they had told exculpatory lies. As the trial judge had found at trial, the errors in administering the cautions were straightforward and understandable oversights. He had concluded that the new-style cautions had not pressured the applicants into providing any element of their various defences. That reasoning had been upheld by the Court of Appeal.

(b) The applicants' submissions

168. The first three applicants submitted that it might have been justified to conduct the safety interviews before their lawyers arrived. However, the police should at least have tried to obtain the lawyers' attendance before proceeding with the safety interviews. They had not. There was, therefore, no compelling reason for the lack of legal representation. In this respect, the applicants underlined that they did not seek to disturb the trial judge's findings as to the hectic pace of the police enquiry, the facilities at the police station or the lack of malice in administering the wrong cautions. They did, however, point out that the police could have contacted lawyers as soon as they had requested legal assistance. Had the police done so, there was every prospect that the applicants would have been represented by solicitors by the time the police were ready to conduct the safety interviews. The applicants therefore argued that the decision to hold them incommunicado was a convenience to police officers acting under great pressure but not a necessity.

169. In any case, whether or not the denial of legal representation was justified by compelling reasons, the applicants contended that the subsequent admission at their trial of the answers they had given was in violation of Article 6. The right to legal advice was not merely a protection against coercion and ill-treatment: there was a clear link between the right to legal advice and the right against self-incrimination running through the case-law of the Court both before and after *Salduz*.

170. There was no relevance in the distinction drawn by the Government between telling lies and making incriminating admissions or staying silent (see the Government's submissions at paragraph 164 above). Any such distinction had no basis in domestic law or the Court's case-law. *Saunders Saunders*, cited above, § 71, made it clear that the right not to incriminate oneself could not reasonably be confined to admissions. Lies were often deployed as evidence of guilt because a proven lie was a self-incriminating statement. Furthermore, when choosing not to exercise their right to silence,

the applicants had not had access to a lawyer and the Court could not know whether, if legally advised, they would have acted differently. Finally, the Government's distinction would have uncertain and unpredictable consequences: in an interview an arrested person could remain silent, tell lies, admit the offence or give answers that might later be argued to be lies or admissions. Unless there was a single rule for questioning, the police, trial courts and appellate courts could not know if the interview was compatible with the Convention.

171. The applicants maintained that the admission of the statements unduly and irretrievably prejudiced their defence. Although the Court of Appeal had cautioned against attaching disproportionate importance to the statements, the trial judge had described them as having "potentially high relevance" and the Court of Appeal had also described the statements as "important evidence" (paragraphs 62 and 92 above). The Court of Appeal had placed the issue of the safety of the convictions above the applicants' right to a fair trial. To the extent that the Government relied on the checks and balances in the domestic legal system, this argument had been considered and rejected over a decade ago in *Magee*, cited above, § 37.

172. Finally, the use of the incorrect caution was not determinative but did add to the seriousness of the violation. First, the answers that the applicants gave followed a caution which obliged them to put forward an account or face adverse consequences. Second, if solicitors had been present the error would have been noticed and corrected. Third, the Court should be wary of the trial judge's conclusion that it would have made no difference, since in *John Murray*, cited above, § 68, it had considered it to be highly speculative to seek to determine how a detained person might have behaved had he been afforded legal advice.

173. Mr Omar added in separate submissions that the Court of Appeal had not found that there was no breach of the applicable code of practice but had dismissed the appeals on the ground that any breach did not render the statements inadmissible (see paragraph 95 above). He argued that the denial of access to a lawyer could not be justified when the circumstances of the case did not fall within any of the exceptional and circumscribed circumstances for delaying access to a lawyer contained in Code C. The unlawful denial to him of his Article 6 rights was made worse because the denial of access to a lawyer was intentional. He did not dispute the justification for carrying out safety interviews *per se*, but that was different from the justification for carrying out safety interviews when an individual had been intentionally and unlawfully denied access to a lawyer.

2. The parties' observations concerning the fourth applicant (Mr Abdurahman)

(a) The Government's submissions

174. The Government submitted that the failure to comply with the applicable code of practice obligation to caution a suspect and inform him of his entitlement to free legal assistance (see paragraph 134 above) did not necessarily violate Article 6, as that Article did not require that statements made in the absence of such procedural safeguards not be adduced in evidence.

175. The Government accepted that as, a matter of principle, statements made in the absence of a caution or legal advice should be treated with care, and that there should be a justification for the denial of safeguards. However, the entirety of the proceedings had to be considered. On a proper reading of the Court's case-law, particularly *Aleksandr Zaichenko v. Russia*, no. 39660/02, 18 February 2010, what was necessary was that, at trial, the accused should have an opportunity to challenge the use of the statement, its reliability should be assessed, the fairness of admitting it should be considered and the trial court should give reasons for its decisions.

176. In the fourth applicant's case there were compelling reasons for the actions of the police and, at trial, his rights had been respected. The justification for the police action was the need to obtain information on the three would-be suicide bombers who were still at large when he was questioned (Mr Ibrahim, Mr Mohammed and Mr Osman). The need to protect the public outweighed the need to comply with the code of practice. To have treated the fourth applicant as a suspect before he had confirmed the contents of his statement might have hindered the gathering of information critical to preventing a further terrorist attack. The actions of the police did not represent a systemic practice but were the consequence of particular necessity in the fourth applicant's case.

177. The Government also emphasised that there was no compulsion. The fourth applicant had attended the police station voluntarily. He had not been arrested and his freedom of action was not curtailed (in contrast to the applicants in both *Aleksandr Zaichenko* and *Salduz*).

178. It was also relevant that the pre-caution statement was not one made in isolation. After he had been cautioned and provided with legal assistance, the fourth applicant had decided not to remain silent and had instead confirmed that his witness statement was true (again in contrast to *Aleksandr Zaichenko* and *Salduz*, where the applicants had tried to retract their statements). Indeed, the fourth applicant had relied on his statement to show that he had given valuable assistance to the police. This was his position both at the later police interviews (where he had been cautioned and a lawyer was present) and at trial. Although this was not decisive in determining whether the trial was fair, in contrast to *Amutgan v. Turkey*,

no. 5138/04, 3 February 2009 (where a violation was found in a case involving an illiterate defendant who had later confirmed the accuracy of a written statement made without the benefit of legal advice), here there was no detention or coercive treatment by the police and no systemic denial of legal assistance; there was justification for the denial of legal assistance; and the fourth applicant had not merely confirmed the accuracy of his statement but had relied on it to establish his defence.

179. The Government also pointed out that the fourth applicant had been given the opportunity to challenge the admission of the witness statement at trial and, again in contrast to *Salduz* and *Aleksandr Zaichenko*, the trial judge had properly addressed the question of admissibility. He had found the statement reliable and noted that it had been adopted under caution and after the benefit of legal advice. He had considered it important to his assessment of the reliability of the statement that the fourth applicant had adopted it after receiving legal advice and in the presence of his lawyer. Those reasons had been upheld by the Court of Appeal.

180. Finally, the statement was only one part of the prosecution case and it could not be said that the conviction was based on the statement. There was a vast amount of evidence that Mr Osman had stayed in the fourth applicant's flat and that the fourth applicant had run errands for Mr Osman in order to assist in Mr Osman's escape from the United Kingdom (see paragraph 121 above).

(b) The fourth applicant's submissions

181. The fourth applicant submitted that it was not justifiable purposely to deny a person his rights on the basis of domestic security and then use the evidence obtained from that denial in order to convict him.

182. On the facts of his case, he submitted that, although he had not been legally arrested or detained when he gave his witness statement, he was effectively in police custody for a period of approximately eleven hours. He had not been cautioned, had not had access to legal advice and had not had proper rest for at least eight hours; and his interview had not been tape-recorded. He was continually in the presence of police officers, either in a room at the police station or on the drive to Mr Osman's address. The police officers had informed him that he would be free to leave once he had signed the witness statement. The corollary of this was that he had not been free to leave until he had done so. It also meant the incriminating answers given in his interviews had been extracted through a trick.

183. He contended that there were no compelling reasons for denying him legal advice or for denying him the right against self-incrimination. He advanced four arguments.

184. First, treating him as a witness rather than a suspect was not the only way for the police to obtain information as to the whereabouts of the three suspected bombers. They had already arrested Mr Omar in

Birmingham (see paragraph 14 above). If they had arrested the fourth applicant, they would have had the power to seize his possessions including his mobile telephone. That phone would have been a valuable source of information. It was of note that Mr Osman was later traced to Rome as a result of telephone calls made by him in Rome to the fourth applicant's mobile phone. In addition, if they had arrested the fourth applicant, the police would have had the power to search his home, and carry out forensic examinations there, which in due course they did.

185. Second, if the police had made a tactical decision to breach the fourth applicant's rights in order to obtain information, then they could have treated the fourth applicant as an informant. It was a common practice for the police not to prosecute such people in exchange for the information they gave.

186. Third, it was extremely unlikely that the suicide bombers would have had a back-up plan if their original plan did not work. The threat to the public that was alleged to stem from the possibility of a back-up plan was not an excuse for the breach of the fourth applicant's rights. This was, in any event, inconsistent with the prosecution's case (both at the fourth applicant's trial and at the trial of the bombers themselves) that there was no such back-up plan.

187. Fourth, if the overwhelming priority of the police was to obtain information as to the three suspected bombers, then their interrogation of the fourth applicant should have focused solely on this issue. However, the interrogation went far beyond this and delved into the state of mind of the fourth applicant, his motivation and the details of any assistance he might have given Mr Osman.

188. The fourth applicant also submitted that the initial breach of the right not to incriminate himself irretrievably prejudiced his Article 6 rights. The post-caution interview was contaminated by the pre-caution interviews and, once arrested, the fourth applicant had immediately retracted parts of the witness statement. In any case, once the prosecution sought to use the statement at trial, it made no difference whether the fourth applicant relied on the police statement or not: the prejudice had already occurred. At trial, he had sought unsuccessfully to challenge the admission of the statement. When that application was refused, a further application to exclude certain parts of the statement on the basis of inaccuracy was made. That application was also refused. At this point, the fourth applicant was presented with a *fait accompli*; his only choice was to highlight certain aspects of the statement that could be regarded as favourable to his case, even though that statement remained evidence for the prosecution, not the defence.

189. The fourth applicant also disputed the Government's submission that there was a vast amount of evidence against him. He considered that the prosecution case was based substantially on his statement and without it there was insufficient evidence to support a conviction. When proper

consideration was given to the entirety of the proceedings there was insufficient justification for the use of the statement at trial, rendering the trial unfair.

190. Finally, the distinctions drawn by the Government between his case and *Amutgan*, cited above, were flawed. First, he had effectively been detained and denied eight hours' sleep. Second, there was insufficient justification for the deliberate breach of his rights. Whether there was systemic basis for that breach could not be decisive of whether his right to a fair trial had been violated. There was no basis for stating that, in *Aleksandr Zaichenko* or *Salduz*, the main reasons for the findings of violations were the domestic courts' failures properly to address the question of admissibility or to give reasons for relying on the statements in question.

3. The Court's assessment

(a) General principles

191. The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275; *Taxquet v. Belgium* [GC], no. 926/05, § 84, 16 November 2010; and *Bandaletov v. Ukraine,* no. 23180/06, § 54, 31 October 2013). The guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair hearing set forth in Article 6 § 1 which must be taken into account in that evaluation (see *Imbrioscia*, cited above, § 37; *Gäfgen v. Germany* [GC], no. 22978/05, § 169, ECHR 2010; *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010; and *Bandaletov*, cited above, § 54). Their intrinsic aim is to contribute to ensuring the fairness of the criminal proceedings as a whole (see *Mayzit v. Russia*, no. 63378/00, § 77, 20 January 2005; and *Seleznev v. Russia*, no. 15591/03, § 67, 26 June 2008). But they are not an end in themselves: compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole, and not on the basis of the isolated consideration of one particular aspect or incident (see *Pishchalnikov v. Russia*, no. 7025/04, § 64, 24 September 2009. See also *Mayzit*, cited above, § 77; and *Seleznev*, cited above, § 67).

192. The right to legal assistance contributes in particular to the protection of the accused against abusive coercion on the part of the authorities. It is a fundamental safeguard against ill-treatment (*Salduz*, cited above, §§ 53-54). Where an accused denied prompt legal assistance alleges improper conduct, notably coercion or ill-treatment, by the police during interrogation, the most careful scrutiny by the domestic tribunals and by this Court is required.

193. The Court explained in *John Murray*, cited above, § 63, that where access to a lawyer has been deliberately restricted at the initial stages of police interrogation, the question is whether the restriction, in the light of

the entirety of the proceedings, has deprived the accused of a fair hearing (see also *Pishchalnikov*, cited above, § 67). It stated that since national laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings, Article 6 will normally require that the accused be afforded a lawyer from these initial stages (see also *Salduz*, cited above, § 52). However, the Court had always recognised that the right to legal assistance could be subject to restrictions for good cause (see *John Murray*, cited above, § 63; *Magee*, cited above, § 41; *Brennan v. the United Kingdom*, no. 39846/98, § 45, ECHR 2001-X; and *Pishchalnikov*, cited above, § 67). At § 55 of its judgment in *Salduz*, cited above, the Grand Chamber set out the applicable principle as follows:

> "... Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 ... The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."

194. It can be seen from *Salduz* that in assessing the compatibility with Article 6 of instances of police interrogation without legal assistance, the Court considers two separate but linked matters. The first is whether there were "compelling reasons" to delay access to legal assistance. A temporary restriction on access to legal advice will not, of itself, fall foul of Article 6 §§ 1 or 3 (c) where this test is satisfied.

195. However, applicants rarely complain of restrictions in respect of legal assistance in isolation. A witness or suspect interviewed by the police and released without charge has little interest in pursuing complaints about inadequate procedural guarantees. The alleged unfairness generally arises because statements made during police interrogation without legal advice are subsequently admitted as evidence in criminal proceedings. Thus, the second aspect of the *Salduz* principle holds that, even where a restriction on access to legal advice was justified for compelling reasons, and thus itself compatible with Article 6, it may nonetheless be necessary, in the interests of fairness, to exclude from any subsequent criminal proceedings any statement made during a police interview in the absence of a lawyer. The question, at this stage of the Court's assessment, is whether the admission of a statement made without access to legal assistance caused undue prejudice to the applicant in the criminal proceedings, taking into account the fairness of the proceedings as a whole.

196. In this respect, the general principles applied by the Court to questions of admissibility of evidence in criminal proceedings are relevant. As the Court has said on many occasions, admissibility of evidence is a

matter for regulation by national law and the national courts and this Court's only concern is to examine whether the proceedings have been conducted fairly (see *Panovits v. Cyprus*, no. 4268/04, § 81, 11 December 2008; *Gäfgen*, cited above, § 162, and references therein). In making this evaluation the Court looks at the proceedings as a whole, having regard to whether the rights of the defence have been respected (see, for example, *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009; *Gäfgen*, cited above, § 164; *Lutsenko v. Ukraine*, no. 30663/04, § 42, 18 December 2008; and *Aleksandr Zaichenko*, cited above, § 57). Pre-trial statements obtained in the absence of procedural guarantees should be treated with caution (see *Lutsenko*, cited above, § 51; and *Zaichenko*, cited above, § 56). When deciding whether the admission of a statement made without legal assistance was compatible with Article 6, the Court will examine, in so far as relevant to the case before it:

(a) the general legislative framework applicable and any safeguards it contains (see, generally, *John Murray*, cited above, § 66; *Salduz*, cited above, § 56; and *Yoldaş v. Turkey*, no. 27503/04, § 50, 23 February 2010);

(b) the quality of the evidence, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Panovits*, cited above, § 82; *Lutsenko*, cited above, § 48; and *Aleksandr Zaichenko*, cited above, § 57); in this respect, improper conduct, notably coercion or ill-treatment, during interrogation and vulnerability of suspects are relevant factors (see paragraph 192 above);

(c) whether the statement was promptly retracted and the admissions made in it consistently denied, particularly once legal advice had been obtained (see *Lutsenko*, cited above, § 51; *Yoldaş*, cited above, § 53; and *Bandaletov*, cited above, § 67);

(d) the procedural safeguards applied during the criminal proceedings, and in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Panovits*, cited above, § 82; *Lutsenko*, cited above, § 48; and *Aleksandr Zaichenko*, cited above, § 57);

(e) the strength of the other evidence in the case (see *Salduz*, cited above, § 57; *Yoldaş*, cited above, § 53; and *Aleksandr Zaichenko*, cited above, § 58-59).

(b) Were there "compelling reasons" to delay access to legal advice?

197. The facts regarding the availability of lawyers to represent or assist the first three applicant's following the latter's arrest have been set out in detail above. They clearly indicate (a) when the applicants requested lawyers (see paragraphs 16 and 20 (Mr Omar), 31 (Mr Ibrahim) and 41 and 43 (Mr Mohammed)); (b) when the lawyers contacted the police station and/or were contacted by the police (see paragraphs 19, 24 and 28 (Mr Omar), 32 and 34-35 (Mr Ibrahim) and 43 (Mr Mohammed)); (c) when

the lawyers arrived at the police station (see paragraphs 28 (Mr Omar), 38 (Mr Ibrahim) and 44 and 46 (Mr Mohammed)); and (d) when the safety interviews were conducted (see paragraphs 18, 22-23 and 25-26 (Mr Omar), 35 (Mr Ibrahim) and 45 (Mr Mohammed)). Thus it is apparent that although a lawyer was physically at the police station (albeit at the front desk and not at the custody suite) before the safety interview in respect of Mr Mohammed, this was not the case in respect of Mr Omar or Mr Ibrahim. As regards the availability of a lawyer to represent or assist the fourth applicant, the facts show that he did not request and was not offered the assistance of a lawyer during his initial police interview or while making his statement (see paragraphs 102-104 above), and that when he was subsequently arrested, cautioned and offered the services of a lawyer, he initially declined (see paragraph 110 above). He subsequently sought, and received, legal advice (see paragraph 111 above).

198. The first question to be examined is whether there were compelling reasons to restrict the applicants' access to legal advice in their early police interviews. The Court has no doubt that there were (compare and contrast *Salduz*, cited above, § 56; and, more generally, *Panovits*, cited above).

199. It is important to note, first, that the present case is different from the case of *Salduz* as the absence of a lawyer during the applicants' initial police questioning did not result from the systemic application of a legal provision (see *Şedal v. Turkey* (dec.), no. 38802/08, § 33, 13 May 2014; compare *Dayanan v. Turkey*, no. 7377/03, § 33, 13 October 2009; and *Çimen v. Turkey*, no. 19582/02, § 26, 3 February 2009). Under the law in force in England, all of the applicants had the right to legal assistance upon arrest and the legal framework required that individual decisions be taken in each case as to when an arrest was to be made and whether, having regard to all of the circumstances, legal assistance was, exceptionally, to be delayed in order to enable "safety" interviews (see paragraph 17 above) to be carried out.

200. As the Government explained, the pressures and responsibilities of the police in the days after 21 July 2005 were substantial (see paragraph 162 above). Two weeks earlier, suicide bombers had detonated their bombs on the London transport system to devastating effect. The attacks had killed fifty-two people and injured countless more, and had temporarily disabled the entire London public transport system. When the first three applicants and Mr Osman detonated their devices two weeks later, the police had to work on the assumption that their conspiracy was an attempt to replicate the events of 7 July. At that stage, the police could not know why the bombs on 21 July had failed to explode and they had to assume that those responsible might attempt to detonate other bombs. The possibility of further loss of life on a large scale was no doubt foremost in their minds. The need to obtain, as a matter of critical urgency, information on any further planned attacks and the identities of those potentially involved in the plot, while ensuring

that the integrity of the investigation was not compromised by leaks, was clearly of the most compelling nature.

201. As regards the first three applicants, the police were also operating under severe practical constraints. While there were extensive facilities at the police station for the detention of terrorist suspects and the investigation of terrorism offences, when the safety interviews were taking place the custody facilities were full. There were eighteen detainees arrested in connection with the attempted bombings, all of whom had to be detained separately to avoid communication and cross-contamination of forensic evidence (see the trial judge's ruling at paragraph 54 above). In spite of those pressures, save for the errors as to the wrong cautions (see paragraphs 15, 22-23, 25-26, 30, 36, 40, 45, 51, 55-58, 64, 67-68, 80, 93 and 134-138 above), the police adhered strictly to the legislative framework which regulated how they had to conduct their investigation (see paragraph 142 above). There is no doubt that the superintendents who authorised the restrictions on the applicants' access to legal advice had reasonable grounds for their beliefs that such restrictions were necessary in order to counter a reasonably perceived and serious threat to the safety of the public since those grounds were contemporaneously recorded by the police in the relevant custody records and they were full, compelling and convincing (see paragraphs 21, 33 and 42 above). That there did exist an underlying urgent purpose of such a compelling character is borne out by the fact that the police questioning of the first three applicants was focused and concentrated on the threat posed to the public, rather than being directed at establishing their criminality (as in the cases of *John Murray* and *Magee*, both cited above). It is further noteworthy that at the time that the restrictions were imposed, it was clear to the police that there were at least four men involved in the bombings, the last of whom, Mr Osman, was still at large. The applicants' submission that the police could have waited until their solicitors arrived before beginning the interrogation is misguided since it is evident that at least part of the reason for delaying access to legal advice was because the police were concerned that access to legal advice would lead to the alerting of other suspects (see paragraphs 21, 33 and 42 above).

202. The restriction on the fourth applicant's access to legal advice was of a different nature. He had voluntarily accompanied the police officers to the police station after agreeing to assist with the police investigation. As a witness, and not a suspect, there was no need for the police to consider whether the fourth applicant ought to be provided with legal advice. The fourth applicant asserts that he ought to have been placed under arrest and treated as a suspect, with all the procedural guarantees that status entailed. While the decision not to arrest and caution the fourth applicant at the point at which his answers began to suggest his involvement in a criminal offence was, as the Court of Appeal found, troubling (see paragraph 127 above) and

in breach of Code C, the exceptional circumstances in which the police were operating must be borne in mind. Again as the Court of Appeal pointed out, the police dilemma at that stage was entirely understandable. The applicant was providing key information about the identity and whereabouts of the suspected fourth bomber, as well as details concerning the identity of the other bombers. At the time of the fourth applicant's first police interview on the evening of 27 July 2005, only Mr Omar had been arrested and he had provided no useful information on the nature of the plot or the identities of those involved. The remaining three bombers were still at large and their identification and arrest were imperative for public safety reasons. It was for the police to decide what course of action was most likely to lead to information on the extent of the risk to public safety and the whereabouts of the remaining bombers. The decision not to arrest the fourth applicant, apparently based on the fear that a formal arrest might lead him to stop disclosing information of the utmost relevance to the public safety issues facing the police, was not an unreasonable one in the circumstances. The imperative to obtain this information concerning the immediate safety of the public was of greater importance to the police at the time of the fourth applicant's questioning than any concern whether he had committed a criminal offence. Given the extreme conditions and time pressure under which they were then operating, this is not a decision that the Court can second-guess.

203. For the above reasons, the Court finds that it has been convincingly established that at the time of the impugned police interviews there was an exceptionally serious and imminent threat to public safety and that this threat provided compelling reasons which justified the temporary delay of all four applicants' access to lawyers.

(c) Were the applicants' Article 6 rights unduly prejudiced by the admission of statements made to the police without the benefit of legal assistance?

204. It remains to be examined whether, even though the decision to delay the applicants' access to legal advice was justified in the circumstances of the case, the subsequent admission of statements that they made without legal advice unduly prejudiced their fair trial rights.

(i) The first three applicants

(α) The general legislative framework

205. First, as noted above, there was a detailed legislative framework setting out the general right to legal advice and providing for limited exceptions on a case-by-case basis (see paragraphs 139-143 and 199 above). The grounds and procedure for applying the exception to the general right to legal advice were set out in detail in Schedule 8 and in Code C (see paragraphs 142, 147 and 151 above). The decision to delay access to legal

advice required authorisation by an officer of superintendent rank or above and was permitted only if the conditions in paragraph 8 of Schedule 8 were fulfilled (see paragraph 142 above). Those conditions were strict and exhaustive. Further, Schedule 8 stipulated that the reasons for the decision were to be recorded and that the detainee was to be informed of them. No restriction on access to legal advice could exceed forty-eight hours (see paragraph 151 above). Paragraph 6.7 of Code C provided that once sufficient information had been obtained to avert the risk of, *inter alia*, any of the dangers set out in paragraph 8 of Schedule 8, the questioning had to cease until the detainee had obtained legal advice (see paragraph 149 above). The provisions of the Terrorism Act 2000 and Code C struck an appropriate balance between the importance of the right to legal advice and the pressing need in exceptional cases to enable the police to obtain information necessary to protect the public.

206. The legal framework was duly applied in the applicants' cases. The restriction on access to legal advice was authorised by a superintendent in each case and the reasons, which fell squarely within the scope of the statutory exception allowing legal advice to be delayed, were recorded (see paragraphs 21, 33 and 42 above). The forty-eight hour time-limit for delaying legal advice was also respected, since the applicants' access to legal advice was delayed for between four and eight hours only (see paragraphs 64, 67 and 68 above). The purpose of the safety interviews – to obtain information necessary to protect the public – was strictly adhered to in the applicants' cases. As the trial judge noted, in questioning Mr Omar the police officers concentrated throughout on issues that might have revealed information relevant to assisting them to locate people or items that could pose a danger to the public. There had also been no suggestion at trial by those acting for Mr Omar that the police had exceeded the requirements of what was necessary and that the lines of questioning had not been relevant to the public safety issues (see paragraph 63 above). In respect of Mr Ibrahim, the judge considered that the questions put did not go beyond legitimate questioning for safety purposes (paragraph 67 above) and as regards Mr Mohammed, he found that the questioning did not exceed the legitimate bounds or purpose of a safety interview and was focused and appropriate (paragraph 68 above). None of these findings is disputed before this Court.

(β) The quality of the evidence and the circumstances in which it was obtained

207. The applicants did not challenge the trial judge's findings in respect of the pressing nature of the police inquiry or the strain on resources at the police station (see paragraph 168 above). They did not allege any coercion, compulsion or other improper conduct which had pressured them into denying any involvement in the events of 21 July 2005. As noted above,

they did not suggest that their questioning went beyond what was envisaged and permissible in the context of a safety interview (see paragraph 206 above).

208. It is true that on some occasions prior to questioning instead of the old-style cautions, new-style cautions were wrongly administered. However, the applicants accept that the erroneous caution was given in error and that there was no malice on the part of the police (see paragraph 168 above). It is furthermore unconvincing to suggest that, had the right words been used, the applicants would have acted differently and, instead of lying to the police, would have set out the hoax defence that they were later to deploy at trial. As the trial judge observed, the defence ultimately relied on did not require any detailed understanding of the criminal law and it could have been summed up by the single word "hoax" (see paragraph 60 above). Any defendant who genuinely believed that his whole enterprise had been a hoax (and thus that there was no real threat to the public safety) would not have needed to ponder the difference between the old and new style caution before telling the police this. Further, both the old and the new-style caution made it clear that anything said could be used in court. The applicants had therefore been warned, in the starkest manner, that any lies told in the safety interviews could be introduced as evidence at trial.

(γ) The procedural safeguards at trial, and in particular the possibility to challenge the disputed evidence

209. It is noteworthy that the applicants were able to, and did, challenge the admission of the safety interview statements. The judge's ruling on the admissibility of the statements was preceded by a *voir dire* (see paragraph 52 above) at which he heard evidence as to the situation faced by the police and submissions as to whether the statements could be admitted compatibly with Article 6. While at the time of his ruling the judge did not have the benefit of the Grand Chamber's judgment in *Salduz*, he did consider all of the relevant authorities of this Court on the right to legal assistance, particularly in terrorism cases. He also gave rigorous consideration to the circumstances surrounding each of the applicants' safety interviews. Having done so, he took great care in explaining why he believed the admission of the statements made in those interviews would not jeopardise the applicants' right to a fair trial (see paragraphs 51-69 above). His ruling was examined on appeal, with the Court of Appeal commenting on the "conspicuous fairness and commanding judicial control" of the trial judge (see paragraph 89 above). The Court of Appeal further noted that the fact that the applicants had chosen not to incriminate themselves but to lie was "[o]n any view an important consideration in the exercise of Fulford J's discretion" (see paragraph 93 above). It found no reason to interfere with the trial judge's decision.

210. More broadly, in cases involving trial by jury the Court has regularly emphasised the importance of directions given to the jury by the trial judge to ensure the fairness of the proceedings (see, for instance, *Mustafa (Abu Hamza) (No. 1) v. United Kingdom* (dec.), no. 31411/07, § 40, 18 January 2011; *Beggs v. the United Kingdom* (dec.), no. 15499/10, § 124, 16 October 2012 (with further references therein)). In the applicants' case, the trial judge performed his crucial role with care, diligence and fairness (see paragraphs 79-83 above). His directions were circulated to and discussed with counsel in advance of delivery. They were also given in written form to the jury. They included the instruction to the jury that, in deciding whether to hold any lie told by the applicants during the safety interviews against them, the jury should remember that the safeguard of access to legal advice had been withheld and bear in mind the possibility of innocent explanations for the lies told (see paragraphs 79 and 81 above). The jury were also asked to take into account the failure to administer the correct caution to the applicants (see paragraph 80 above). An explicit direction was given to the jury that they were not allowed to hold it against the applicants that they had failed to mention during the safety interviews matters which they later had relied on in court (see paragraph 82 *in fine* above). Also, a clear contrast was drawn between the safety interviews and the later interviews where the applicants had had access to legal advice and the trial judge explicitly told the jury that they could only draw adverse inferences in respect of the later interviews (see paragraph 83 above). Throughout his summing-up, the trial judge stressed the need for the jury to consider the case of each defendant and his statements separately, just as the judge himself had done in his ruling on the admissibility of those statements.

(δ) The strength of the other evidence in the case

211. Finally, and this is not without some importance, the safety interview statements were far from the sole evidence in the case and have to be considered alongside the wealth of other prosecution evidence led during the seven-month trial. There was the evidence of the extremist views of the men, their attendance at a training camp in the Lake District, Mr Ibrahim's travelling abroad on jihad, and the references to martyrdom on the same pad of paper which had been used to plan the construction of the bombs (see paragraph 71 above). There was Mr Mohammed's farewell letter (see paragraph 75 above). There was evidence of the extensive contact between the men before and after 21 July 2005 (see paragraph 74 above). There was the evidence that they had bought vast quantities of hydrogen peroxide and patiently concentrated it, marking the bottles in a manner suggesting that they believed that had reached a high enough concentration to achieve an explosion (see paragraph 72 above). There was the evidence as to the construction of the bombs, which were, in all other respects, viable devices,

containing as they did working electrical circuits, detonators and shrapnel, intended to cause maximum impact on explosion (see paragraph 73 above). The prosecution's scientific expert pointed out that, if the intention had only been to create a loud bang, no concentration would have been necessary. The same is true of the inclusion of the shrapnel. There was further scientific evidence in the form of the isotopic analysis, which disproved the men's claim to have concentrated the hydrogen peroxide and then diluted it again with tap water (see paragraph 73 above). There was the witness evidence of the passengers on the trains boarded by Mr Omar and Mr Mohammed as to their shocked reactions when their bombs did not detonate (see paragraph 76 above). Lastly, there was oral evidence from the fifth bomber, Mr Asiedu, flatly contradicting the claim that the attacks had been intended as a hoax (see paragraph 78 above). There is no doubt that this amounted to a significant body of independent evidence capable of undermining the applicants' defence at trial.

(ε) Conclusion

212. In the present case, it must be borne in mind that the applicants, not the prosecution, brought the safety interview statements into play at trial by deploying a defence that was later described by the Court of Appeal as "ludicrous" (see paragraph 89 above). Their defence had all the hallmarks of being tailored to fit the rest of the prosecution case against them. It would not have struck the correct balance between the applicants' Article 6 right and the general interest in their prosecution if, when faced with that hoax defence, the prosecution had been unable to rely on statements from the applicants that not only undermined that defence but flatly contradicted it.

213. For these reasons and for the reasons given above (see paragraphs 205-211) the Court finds that, taken cumulatively, the counterbalancing safeguards contained in the legislative framework governing safety interviews, the careful application of that legislative framework by the police in the applicants' cases, the trial judge's ruling on admissibility and his directions to the jury and the strength of the other prosecution evidence against the first three applicants mean that no undue prejudice can be held to have been caused to their Article 6 § 1 right to a fair trial as a result of the denial of legal advice to them before and during their safety interviews, followed by the admission of the statements made during those interviews at their trial. Accordingly, it concludes that there has been no breach of Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention in respect of the first three applicants.

(ii) The fourth applicant

214. Unlike the statements of the first three applicants, the witness statement made by the fourth applicant was self-incriminatory. Until it was made, the fourth applicant was not a suspect: he was helping the police trace

Mr Osman. But what began as a witness interview to gain information about a suspected terrorist bomber on the run took on a different character as the fourth applicant started to supply information incriminating himself. Yet the police interrogators were nonetheless instructed by a superior not to set in motion the applicable legal machinery for ensuring the rights of suspected persons (see paragraph 102 above). The Court has accepted that the circumstances confronting the police were exceptional and that as a consequence, although their actions were troubling as the Court of Appeal terms it, their reasons for acting as they did were wholly understandable and "compelling" for the purposes of the test set out in *Salduz* (see paragraphs 202-203 above). As with the first three applicants, the critical question when establishing whether there has been a violation of Article 6 §§ 1 and 3 (c) is whether the fourth applicant suffered undue prejudice.

(α) The general legislative framework

215. It is true that the guideline in Code of Practice C to the effect that a person suspected of involvement in a criminal offence should be cautioned before any further questions concerning the offence are put to him (see paragraph 134 above) was not followed in the case of the fourth applicant, as was accepted by the Government and the domestic courts. However, it is significant that there was a clear legislative framework in place to govern the admissibility, in any criminal proceedings subsequently brought, of evidence obtained during police questioning. In addition to the prohibition in section 76 PACE on admitting into evidence a confession obtained by oppression or one which was likely to be unreliable, the trial judge had discretion under section 78 PACE to refuse to admit evidence which he considered would have an adverse effect on the fairness of the proceedings (see paragraphs 152-154 above). The legislation was carefully applied by the trial judge in deciding the fourth applicant's challenge to the admissibility of his witness statement (see further paragraph 222 below).

(β) The quality of the evidence and the circumstances in which it was obtained

216. It is significant that the contents of the fourth applicant's witness statement support the contention that the police interview was not directed at establishing the extent of his own role in the commission of a criminal offence but at obtaining details about the terror plot and planning, identifying the alleged bombers and those who were providing them with assistance, and ascertaining the whereabouts of Mr Osman. The fourth applicant recounted his chance meeting with Mr Osman and the latter's claim to have been the fourth bomber (see paragraph 105 above). He provided details of how long Mr Osman had stayed with him and where he had spent the two nights following the bombing (see paragraphs 105-106 above). He narrated the content of his conversations with Mr Osman

concerning the planning of the bombings and the identities of the other bombers (see paragraph 106-107 above). He was asked by the police to examine photographs of the suspected bombers and confirm their identities (see paragraph 106 above). He provided information about where Mr Osman had gone after leaving the London flat (see paragraph 108 above). He described Mr Osman's wife and showed police officers where he believed that Mr Osman and his family lived (see paragraphs 103 and 109 above). All this information was of key importance to the public safety issues at stake at this stage in the police investigation, as it provided intelligence to the police as to the nature of the plot and the identities and whereabouts of some of the central participants. The information was all the more important since, at that time, of the attempted bombers only Mr Omar had been arrested and he had claimed not to know the identities of any of the suspects or to have any information concerning the attacks (see paragraph 27 above).

217. It is also noteworthy that the witness statement itself, although it became self-incriminating after some time into the interview, was also self-exculpatory. The fourth applicant emphasised the unexpected nature of his encounter with Mr Osman at Clapham Junction train station; his complete ignorance at that time of Mr Osman's involvement in the attempted bombings; his failure to believe Mr Osman when he claimed to have participated in the attempted bombings; the impossibility of recognising Mr Osman in photographs on the television and in the newspapers; his fear for his personal safety which led him to agree, albeit reluctantly, to allow Mr Osman to stay with him for a few days; and his relief and cutting of contact once Mr Osman had left (see paragraphs 105-108 above). Most of the factual elements of the fourth applicant's account could be, and ultimately were, corroborated by surveillance records, fingerprint evidence, mobile phone data and cellsite records and the evidence of Mr Osman himself (see paragraphs 121 and 125 above). Further, the fourth applicant's account of the assistance given to Mr Osman was limited to the admission that he had provided shelter and clothing (see paragraphs 105 and 107 above). He omitted to mention that he had met with Mr Sherif to collect a passport and with another of his co-defendants to collect the video camera used to film the suicide messages. The collection of the passport in particular greatly facilitated Mr Osman's escape from the United Kingdom and showed the critical practical assistance that the fourth applicant had provided but not recounted in his witness statement.

218. It is further of relevance that there was no coercion of the fourth applicant in the sense that he was not forced to incriminate himself. In this context, it is significant that the fourth applicant had agreed to assist the police and had attended the police station voluntarily (see paragraph 101 above). He was questioned not as a suspect but as a witness and was free to leave at any time. There was accordingly no significant curtailment of the

applicant's freedom of action (see *Alexander Zaichenko*, cited above, §§ 48-51; and *Bandaletov*, cited above, §§ 61-62). This conclusion is not undermined by the possibility that, had he tried to leave the police station after he had begun to discuss his role in sheltering Mr Osman, he might have been arrested. Until such an arrest took place, his formal position as a witness, and not a suspect, dictated the manner and circumstances in which the statement was taken. Concerns regarding the potentially coercive conditions of police interrogation and the vulnerability of suspects, adverted to in the Court's case-law as being relevant in this context (see paragraphs 192 and 196(b) above above) did not arise. As a consequence, and as the domestic courts found, there was nothing to indicate that the witness statement was, or might be, unreliable (see paragraphs 118 and 128 above).

(γ) Whether the statement was promptly retracted

219. Throughout the police investigation and the criminal proceedings, the applicant sought to rely on the fact that he had voluntarily offered early assistance to the police to mitigate his actions (see also *Bandaletov*, cited above, §§ 27 and 61). In his prepared statement read out on 30 July 2005 after consultation with his solicitor, he emphasised the valuable assistance that he had given (see paragraph 111 above). He made the same point in a police interview on 1 August (see paragraph 112 above). In his appeal against sentence, he successfully relied on the early assistance provided to seek a reduction in the term of imprisonment he had been sentenced to serve. The Court of Appeal considered the matter of pre-arrest assistance to the police to be relevant to the sentencing exercise and in the applicant's case it led to a two-year reduction in sentence on appeal (see paragraphs 130-132 above).

220. It is also significant that as soon as the applicant was arrested and cautioned, he was offered legal advice, although at that time he declined it (see paragraph 110 above). He was not interviewed again until two and a half days later, by which time he had availed himself of his right to legal assistance. During this period, he had ample opportunity to reflect on his defence, with the benefit of legal advice, in order to choose how he wished to proceed. He could have chosen at that stage to retract the witness statement, relying then on the arguments which he now advances. Instead he chose to adopt his witness statement and build upon it, clarifying some factual details and emphasising once more his desire to assist the police and his ignorance as to Mr Osman's role in the attempted bombings (see paragraph 111 above and *Bandaletov*, cited above, §§ 17-18, 23, 26 and 67; and compare and contrast *Lutsenko*, cited above, §§ 10 and 51). The decision not to retract the witness statement once he had received legal advice was an important factor in the trial judge's finding that the statement was reliable and that it would not be unfair to admit it or an abuse of process to continue with the trial (see paragraphs 118, 123 and 128 above). By

converse implication, had the applicant retracted the statement after having received legal advice, this would have weighed heavily in the balance against its admission. The Court accordingly rejects the fourth applicant's claim to have been presented with a *fait accompli* once the statement had been taken (see paragraph 188 above). It is also significant in this respect that, while he did challenge the admissibility of the statement at trial, he has failed to explain why he felt unable to challenge it at an earlier stage.

221. It is true that in *Titarenko v. Ukraine,* no. 31720/02, § 87, 20 September 2012, the Court did not consider the fact that the applicant there had repeated his confession in the presence of his lawyer to undermine its finding that his rights had been irretrievably prejudiced. However, this conclusion in that particular case cannot be taken in isolation: as the Court has already emphasised, the question whether criminal proceedings were fair must be assessed by reference to the proceedings in their entirety (see paragraphs 191-196 above) and the facts of *Titarenko* were significantly different. Notably, the impugned interview in that case was conducted once the applicant had been arrested and was in involuntary police custody and the applicant later retracted what he had said in his confession, claimed that he had an alibi and contended that the confession had been obtained from him under duress. None of these features were present in the fourth applicant's case. As noted above, the applicant had at first been interviewed as a witness while voluntarily attending the police station (see paragraph 218 above). In suspect interviews on 30 July, 1 August, 2 August and 3 August, all conducted in the presence of a lawyer and after the applicant had received legal advice, he either reiterated what he had previously said or referred to his prior statement. At no stage did he seek to advance any other version of events than the one given to the police during his initial interview (see paragraph paragraphs 111-112 and 220 above and compare and contrast also *Salduz*, cited above, § 17; and *Alexander Zaichenko*, cited above, §§ 14-15).

(δ) The procedural safeguards at trial, and in particular the possibility to challenge the disputed evidence

222. A number of procedural opportunities existed at trial to ensure the fairness of the proceedings. The applicant enjoyed the right to challenge the admission of the statement and availed himself of that right. In the context of his examination of the challenge, the trial judge was persuaded that there was no oppression and that nothing was said or done by the police officers that could have rendered the statement unreliable (see paragraph 118 above). He studied carefully the circumstances in which the statement in its totality had been adopted by the fourth applicant and provided detailed reasons for his conclusion that there would be no unfairness if the statement were admitted in its entirety and if the prosecution were to proceed (see paragraphs 117-120 and 123 above; and compare and contrast *Panovits*,

cited above, § 85; and *Alexander Zaichenko*, cited above, § 58). His ruling was reviewed meticulously on appeal and his conclusions upheld (see paragraphs 128-129 above).

(ε) The strength of the other evidence in the case

223. Finally, and most importantly, a great deal of other incriminating evidence was placed before the jury as proof of the charges against the fourth applicant (see paragraph 121 above). CCTV footage showed him in the company of Mr Osman at Clapham Junction train station, Vauxhall train station and walking to the fourth applicant's home. Cellsite analysis showed the contact which had taken place between the two men and demonstrated the presence of Mr Osman in the fourth applicant's home. It also corroborated the prosecution allegation that the fourth applicant had met Mr Sherif to collect a passport for Mr Osman. A fingerprint showed that Mr Osman had been in contact with a newspaper, containing a report of the bombings together with photographs, found in Mr Osman's flat. There was oral evidence from Mr Sherif as to his contact with the fourth applicant in connection with Mr Osman's escape after the bombings and Mr Osman gave evidence which largely reflected the contents of the fourth applicant's statement (see paragraph 125 above). All this evidence was of itself clearly incriminating and tied the fourth applicant to Mr Osman's attempt to hide from the police and to flee the United Kingdom after the failed attacks.

(ζ) Conclusion

224. For the reasons stated above (see paragraphs 215-223), the Court finds that, taken cumulatively, the fourth applicant's adoption of his statement after having received legal advice, the counterbalancing safeguards contained in the legislative framework and available at trial with a view to ensuring the fairness of the proceedings, including the trial judge's ruling on admissibility, and the strength of the other prosecution evidence against the fourth applicant mean that no undue prejudice can be held to have been caused to his Article 6 § 1 right to a fair trial as a result of the failure to caution him and provide him with access to a lawyer during his initial police interview, followed by the admission of his statement at trial. Accordingly, it concludes that there has been no breach of Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention in respect of the fourth applicant.

FOR THESE REASONS, THE COURT:

1. *Decides*, unanimously, to join the application of the fourth applicant to those of the first three applicants;

2. *Declares* admissible, unanimously, the first three applicants' complaint concerning their police interviews without access to a lawyer and the use of the evidence obtained from those interviews at trial;

3. *Declares*, unanimously, the fourth applicant's application admissible;

4. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) in respect of the first three applicants;

5. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) in respect of the fourth applicant.

Done in English, and notified in writing on 16 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Kalaydjieva is annexed to this judgment.

I.Z.
F.E.P.

DISSENTING OPINION OF JUDGE KALAYDJIEVA

The applicants in the present joined cases argued (see paragraph 169 of the judgment) that "the right to legal advice was not merely a protection against coercion and ill-treatment: there was a clear link between the right to legal advice and the right against self-incrimination running through the case-law of the Court both before and after *Salduz*" (see *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008). They furthermore maintained (see paragraph 170) that "there was no relevance in the distinction drawn by the Government between telling lies and making incriminating admissions or staying silent ... Any such distinction had no basis in domestic law or the Court's case-law". The principles set out, in particular, in the case of *Saunders v. the United Kingdom* (17 December 1996, § 71, *Reports* 1996-VI) "made it clear that the right not to incriminate oneself could not reasonably be confined to admissions". In their view such a distinction "would have uncertain and unpredictable consequences".

I regret the fact that the majority of my learned colleagues seem to have failed to address these complaints jointly as raised by the applicants. As in *Gäfgen v. Germany* ([GC], no. 22978/05, ECHR 2010), the complaints of insufficient safeguards for the privilege against self-incrimination were separated from the allegations that the police had deliberately impeded access to defence lawyers until after the applicants had been questioned and had made statements concerning the offences of which they were suspected.

While the case-law of this Court sees the privilege against self-incrimination as one of the basic principles of Article 6 of the Convention, there is little doubt that the "minimum right to legal assistance" enshrined in Article 6 § 3 (c) serves as one of the basic guarantees for the protection of this privilege. In the present case, the majority agreed with the domestic authorities and the Government that "the police were concerned that access to legal advice would lead to the alerting of other suspects" (see paragraph 201) and were satisfied that, at the time of the "safety interviews", the delayed access to legal advice was justified by "the need to obtain, as a matter of critical urgency, information on any further planned attacks and the identities of those potentially involved in the plot, while ensuring that the integrity of the investigation was not compromised by leaks", a need which "was clearly of the utmost compelling nature" (see paragraph 200). While I am fully aware of the difficult and urgent situation, which called for "safety interviews" for the purposes of obtaining information that was urgently necessary to remove imminent danger and save the lives of many, I find myself unable to follow the argument that preventing access to a lawyer may be justified for the purposes of "ensuring that the integrity of the investigation was not compromised by leaks". This

argument appears to be broadly dismissive of the very essence of the right guaranteed by Article 6 § 3 (c), being potentially applicable to any investigation proceedings, and reflects a generalised view that lawyers constitute a threat to justice by definition.

I also regret that there is no analysis as to whether or not the situation with which the applicants were confronted during the "safety interviews" – the applicable legal framework, which appears to leave no space for the right to remain silent, the erroneous or omitted cautions against self-incrimination, taken together with the absence of legal assistance –, amounted to "coercion or oppression in defiance of the suspect's will". A proper analysis of this situation may lead to the conclusion that, taken together, these circumstances inevitably trap suspects in a situation where both their silence and their lies may be lawfully interpreted to their detriment, thus leaving space only for confession. The compatibility of this situation with the principles in *Saunders* is questionable. It appears that in this regard the majority were satisfied with the observation that they were neither arrested, nor subjected to any ill-treatment. I am not convinced that this suffices for the purposes of ruling out "coercion" within the meaning of the Court's case-law. In this regard I would simply mention the principles reiterated in *Gäfgen* (cited above, § 168) where, with regard to "the use of evidence obtained in breach of the right to silence and the privilege against self-incrimination, the Court reiterate[d] that these [were] generally recognised international standards which [lay] at the heart of the notion of fair procedures under Article 6". The Grand Chamber continued as follows:

> "Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see, *inter alia*, S*aunders v. the United Kingdom* [GC], 17 December 1996, § 68, *Reports* 1996-VI; *Heaney and McGuinness v. Ireland*, no. 34720/97, § 40, ECHR 2000-XII; and the judgment in *Jalloh*, cited above, § 100)."

Finally, the case raises yet again the issue of appropriate remedies in cases of infringement of the privilege against self-incrimination. Instead of clarifying the scope of this privilege and the appropriate remedies for its infringement, in the case of *Gäfgen* the Grand Chamber focused its examination on the Article 3 aspects of the case, albeit noting the provisions of other international instruments and the views of other courts concerning the "exclusionary rule" established for the protection of the privilege against self-incrimination. In this regard the Grand Chamber admitted that "in its case-law to date, it has not yet settled the question whether the use of such

evidence will always render a trial unfair, that is, irrespective of other circumstances of the case".

Having found that, in breach of the law, the fourth applicant Mr Ismail Abdurahman had been deliberately questioned without a proper caution against self-incrimination, the majority deemed it sufficient that this "did not give rise to undue prejudice to his defence rights" and in fact left the assessment of appropriate remedies to the national criminal courts.

In failing to analyse both whether the circumstances in the first three cases amounted to coercion to self-incrimination and what the appropriate remedies should be in established circumstances of self-incrimination, i.e. in the case of the fourth applicant, under the Convention rather than domestic law standards, I ask myself whether this Court's scrutiny was at all necessary or appropriate, or was it in fact redundant, as falling outside the scope of the Court's competence and even encroaching upon the domestic authorities' margin of appreciation?