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

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Delaying access to a lawyer during police questioning of 21 July London bombers and an accomplice was justified and did not prejudice their trials

In today's **Chamber** judgment[1] in the case of **Ibrahim and Others v. the United Kingdom** (nos. 50541/08, 50571/08, 50573/08, and 40351/09) the European Court of Human Rights held, by six votes to one, that there had been:

no violation of Article 6 § 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention on Human Rights.

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene and a police investigation immediately commenced. The first three applicants, Mr Ibrahim, Mr Mohammed and Mr Omar, were arrested on suspicion of having detonated three of the bombs. Mr Abdurahman, the fourth applicant, was initially interviewed as a witness in respect of the attacks but it subsequently became apparent that he had assisted one of the bombers after the failed attack and, after he had made a written statement, he was also arrested. All four applicants were later convicted of criminal offences. The case concerned the temporary delay in providing the applicants with access to a lawyer, in respect of the first three applicants, after their arrests, and, as regards the fourth applicant, after the police had begun to suspect him of involvement in a criminal offence but prior to his arrest; and the admission at their subsequent trials of statements made in the absence of lawyers.

The Court noted that two weeks earlier, suicide bombers had detonated their bombs on the London transport system, killing fifty-two people and injuring countless more. It was satisfied that, at the time of the four applicants' initial police interviews, there had been an exceptionally serious and imminent threat to public safety, namely the risk of further attacks, and that this threat provided compelling reasons justifying the temporary delay in allowing the applicants' access to lawyers. It also found that no undue prejudice had been caused to the applicants' right to a fair trial by the admission at their trials of the statements they had made during police interviews and before they had been given access to legal assistance. The Court took into account the counterbalancing safeguards contained in the national legislative framework, as applied in each of the applicants' cases; the circumstances in which the statements had been obtained and their reliability; the procedural safeguards at trial, and in particular the possibility to challenge the statements; and the strength of the other prosecution evidence. In addition, as concerned the fourth applicant, who had made self-incriminating statements during his police interview, the Court emphasised the fact that he had not retracted his statements even once he had consulted a lawyer but had continued to rely on his statement in his defence up until his request that it be excluded at trial.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

COUNCIL OF EUROPE
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Principal facts

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

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

Mr Abdurahman, the fourth applicant, was not suspected of having detonated a bomb and was initially interviewed by the police as a witness. He started to incriminate himself by explaining his encounter with one of the suspected bombers shortly after the attacks and the assistance he provided to that suspect. The police did not, at that stage, arrest him and advise him of his right to silence and to legal assistance. Instead, they continued to question him as a witness and took a written statement from him. He was subsequently arrested and offered legal advice. In his ensuing interviews, he consistently referred to his written statement. This statement was admitted as evidence at his trial. He was convicted in February 2008 of assisting one of the bombers and of failing to disclose information about the bombings. He was sentenced to ten years' imprisonment. His appeal against his conviction was dismissed in November 2008 and his sentence reduced to eight years' imprisonment on account of the early assistance that he had given to the police.

Complaints, procedure and composition of the Court

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

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

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

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),

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

Decision of the Court

The Court reiterated that it had always recognised that the right to legal advice could be subject to restrictions for good cause. In the Grand Chamber judgment *Salduz v. Turkey* the Court had referred to the possibility of restricting access to a lawyer for "compelling reasons". [2] However, even where a restriction on access to legal advice was justified for compelling reasons, it might 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, was 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.

Were there compelling reasons to delay access to a lawyer?

In the applicants' case, the Court was convinced that, at the time of the four applicants' initial police interviews, there had been an exceptionally serious and imminent threat to public safety, namely the risk of further attacks, and that this threat provided compelling reasons which had justified the temporary delay in allowing their access to lawyers. As concerned the first three applicants, the Court emphasised that the restrictions did not result from the systemic application of a legal provision denying legal advice but from an individual decision in each case as to whether it was appropriate, exceptionally, in all the circumstances to delay legal assistance. It also noted that the police had carefully adhered to the legislative framework in place, despite the severe practical constraints under which they were operating. Nor was the decision not to arrest the fourth applicant, based on the fear that a formal arrest might lead him to stop disclosing information of the utmost relevance to public safety issues, an unreasonable one in the circumstances. The information he was providing was all the more important since at that time only one of the bombers (Mr Omar) had been arrested and the remaining three bombers were still at large.

Was the fairness of the applicants' trial prejudiced as a result of the admission in evidence of their statements to the police without legal advice?

The first three applicants

First, the Court reiterated that there was a clear and detailed legislative framework in place which set out the general right to have access to a lawyer upon arrest, which envisaged the possibility of delayed access in exceptional cases and provided certain safeguards. The conditions for authorising a delay were strict and exhaustive. The provisions of the Terrorism Act 2000 thus 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. That legal framework had been carefully applied in the case of the first three applicants. Their restriction on access to a lawyer had been delayed by between four and eight hours only, which was well within the 48-hour time limit for delaying legal advice, had been authorised by a superintendant in each case, and the reasons, which fell within the scope of the statutory exception allowing legal advice to be delayed, had been recorded. Moreover, the purpose of the safety interviews – to obtain information necessary to protect the public – had been strictly adhered to.

It was further significant that none of the applicants alleged any coercion, compulsion or other improper conduct which had pressured them into denying any involvement in the events of 21 July 2005.

There had also been procedural opportunities at trial to allow the applicants to challenge the admission and use of their statements and the weight to be given to them. The trial judge had given

[2] In the Grand Chamber judgment *Salduz v. Turkey* (application no. 36391/02 of 27 November 2008) the Court notably held that "... 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."

rigorous consideration to the circumstances surrounding each of the applicants' safety interviews and had taken great care in explaining why he believed the admission of statements made in those interviews would not jeopardise the applicants' right to a fair trial. He had performed his role with care, diligence and fairness, formulating careful directions to the jury in which he reminded them that the safeguard of access to legal advice had been withheld and directed them to bear in mind the possibility of innocent explanations for the lies they had told.

Lastly, the safety interview statements were far from being the only incriminating evidence against the applicants. There was a significant body of independent evidence capable of undermining the applicants' defence at trial. In particular, there was evidence of the extremist views of the men; extensive contact between them before and after 21 July 2005; their having bought vast quantities of hydrogen peroxide and having patiently concentrated it, marking the bottles in a manner suggesting that they believed that they had reached a high enough concentration to achieve an explosion; and how the bombs had been constructed, containing as they did working electrical circuits, detonators and shrapnel intended to cause maximum impact on explosion. There was also 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; and from the fifth bomber who flatly contradicted the claim that the attacks had been intended as a hoax.

The fourth applicant

In the case of Mr Abdurahman, the Court accepted that there had been a breach of an applicable code of practice concerning the cautioning of suspects. However, it considered it significant that there was a clear legislative framework in place to govern the admissibility at trial of evidence obtained during police questioning. The trial judge had examined carefully the fourth applicant's challenge to the admission of the statement at trial and had concluded that there was no oppression and nothing to suggest that the statement was unreliable. He had 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.

It was further relevant that there was no coercion of the fourth applicant in the sense that he had not been forced to incriminate himself. He had attended the police station voluntarily. Until his arrest, his formal position as a witness, and not a suspect, dictated the manner and circumstances in which the statement was taken. It was also important that the police interview was not directed at establishing the extent of the fourth applicant's 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. The witness statement itself, while self-incriminatory, was also self-exculpatory, explaining the fourth applicant's unexpected meeting with the bomber and his initial ignorance of the latter's involvement in the attack.

The Court also referred to the fact that Mr Abdurahman had not retracted his statement. When arrested and offered legal advice, he initially declined before then seeking the assistance of a lawyer. He had had ample time before subsequent police interviews to reflect on his defence, with the benefit of legal advice, and could have decided then to retract the witness statement, relying on the arguments he later advanced. Instead, he had built upon it, relying on the fact that he had voluntarily offered early assistance to the police to mitigate his actions. At no stage during the later interviews, all conducted in the presence of a lawyer, did he give any other version of events than the one given to the police during his initial interview. Indeed, his pre-arrest assistance to the police led to a two-year reduction in his sentence on appeal.

Most importantly, there was a great deal of other incriminating evidence, including CCTV footage showing him in the company of one of the bombers and cellsite analysis showing contact between the two men and supporting the prosecution allegation that Mr Adburahman had collected a passport to enable the bomber to flee the country after the attacks. The bomber himself had given evidence largely corroborating the fourth applicant's witness statement. All this evidence was of

itself clearly incriminating and tied the fourth applicant to the bomber's attempt to hide from the police and to flee the United Kingdom after the failed attacks

Conclusion

Taking the above-mentioned considerations cumulatively, the Court found that no undue prejudice had been caused to the applicants' right to a fair trial as a result of the failure to provide access to a lawyer before and during the first three applicants' safety interviews or to caution or provide access to a lawyer to the fourth applicant during his initial police interview, followed by the admission of the statements made during those interviews at trial. It therefore concluded that there had been no violation of Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention.

Separate opinions

Judge Kalaydjieva expressed a dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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