



Holding part of a murder trial behind closed doors did not violate the right to a fair trial

In today's **Chamber judgment**¹ in the case of [Yam v. the United Kingdom](#) (application no. 31295/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights on account of the courts' decision to hold part of the applicant's trial for murder *in camera*, and,

held that the UK had not failed to comply with its obligations under **Article 34 (right to individual petition)** of the European Convention.

It declared other complaints inadmissible.

The Court found in particular that the order to close some of the proceedings to the press and public for national security reasons had not resulted in any unfairness at the trial. Furthermore, the domestic courts had carried out a thorough review of the prosecution request for such an order before granting it, a process in which the defence had fully participated.

Principal facts

The applicant, Wang Yam, is a United Kingdom national who was born in 1961.

In 2006 the applicant was charged with murder and a number of other offences linked to alleged theft of the victim's mail.

At the start of his trial in January 2008 the judge ordered that part of his defence evidence be heard *in camera* in the interests of national security and to protect the identity of a witness or other person. The defence appealed unsuccessfully against that order.

At trial, the applicant's evidence, together with the evidence of prosecution witnesses led solely to rebut his defence, was heard *in camera*. He was subsequently convicted of murder after a retrial. His appeals were unsuccessful.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicant complained that the hearing of evidence *in camera* had led to his trial being unfair. He also made a number of other complaints under Article 6 § 1 about the criminal proceedings against him.

He alleged in addition that the State had failed to comply with its obligations under Article 34 (right of individual petition) by refusing to allow disclosure of the *in camera* material to this Court.

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.

The application was lodged with the European Court of Human Rights on 28 April 2011.

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

Krzysztof **Wojtyczek** (Poland), *Judge*,
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 6 §§ 1 and 3 \(d\)](#)

The Court noted that the decision to hold part of the applicant's trial *in camera* had been made for national security reasons, and it had therefore not been provided with detailed reasons for that measure.

However, it found that Mr Yam had been fully involved in the procedure which had led to the making of the *in camera* order: all the evidence concerning the reasons for the prosecution request had been made available to him and he had taken part in the hearing on the matter.

In granting the order, the trial judge had also carefully balanced the need for openness against the national security interests at stake and had satisfied himself that Mr Yam could nevertheless have a fair trial. The decision to hold part of the trial *in camera* had also been reviewed on appeal. The Court concluded that the decision and the reasons for it had been subjected to rigorous and independent scrutiny by judges on several occasions. The Court also found it significant that the *in camera* order was limited to the extent necessary to protect the interests at stake and applied only to a specific part of the applicant's defence.

The Court further found that there was no evidence that the *in camera* decision had caused any unfairness at the trial. As to the applicant's argument that holding part of the trial behind closed doors had prevented more defence witnesses from coming forward the Court found this to be speculative and observed that most of the trial had in any case taken place in public and had attracted much publicity. Nor did it accept the applicant's argument that prosecution witnesses had had more standing, as they had been able to testify *in camera*. It noted that the manner in which evidence had been taken from them and put before the jury had been exactly the same as for all other witnesses in the case.

The applicant had also argued that not being able to disclose the *in camera* material to the Strasbourg Court had affected his ability to present his case to it. However, the Court found that in his written submissions, he had made no further substantive arguments regarding the alleged unfairness at trial, even though the domestic courts had found that he would be able to do so while respecting the *in camera* order.

The Court concluded that the request to hold part of the trial behind closed doors had been thoroughly reviewed, the applicant had taken part in those proceedings and the justification for the order had been examined in detail several times. Overall, there was nothing to suggest that the order had resulted in any unfairness to the applicant in the trial and there had been no violation of Article 6 §§ 1 and 3 (d).

Other complaints under Article 6 § 1

The applicant also complained about his being retried for murder, burglary and theft after the first jury had been unable to come to a verdict on those charges; about the admission of qualified identification evidence; and about the circumstantial nature of the case against him for murder.

However, the Court found that he had not made out any arguable complaint of unfairness arising from these issues and rejected the complaints as manifestly ill-founded. It also rejected a complaint about the 2017 appeal proceedings as it had been raised outside the six-month time-limit.

Article 34

Mr Yam submitted that the UK authorities' refusal to disclose the *in camera* material to the Court had interfered with his right to individual petition.

The Court noted the applicant had asked it to request the material in question from the UK authorities, but that it had decided not to do so. This would usually be fatal for a related complaint under Article 34. In any event, a refusal by a State to supply such material would generally not lead to a finding that Article 34 had not been complied with, provided that the decision had been subject to some form of adversarial proceedings before an independent body competent to review the reasons and the relevant evidence. In the applicant's case the UK decision to withhold the *in camera* evidence from it had been reviewed by the domestic courts at three levels of jurisdiction with the courts handing down detailed justifications for their decisions. The Court found accordingly that there had been meaningful independent scrutiny of the asserted basis for the continuing need for confidentiality. There had therefore been no failure by the authorities to comply with their obligations under Article 34.

The judgment is available in English only.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.