



Police officer's presence on jury made trial unfair

In today's Chamber judgment in the case [Hanif and Khan v. the United Kingdom](#) (application nos. 52999/08 and 61779/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been a **violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights in respect of both applicants.

The case concerned the applicants' complaint that the presence of a police officer on the jury, which convicted them of drugs offences, violated their right to a fair hearing.

Principal facts

The applicants, Ilyas Hanif and Bakish Allah Khan, are British nationals who were born in 1967 and 1978 respectively. At the time of lodging his application, Mr Hanif was serving an eight-year prison sentence; Mr Khan is currently serving a 15-year sentence. They were both convicted in January 2007 of conspiracy to supply heroin.

During the trial, in which they were co-defendants, Mr Hanif's defence was that a third man had left the drugs in his car. The court heard evidence from police officers, who said that they had not seen anyone else in the car. One of the jurors, AT, indicated to the judge that he was a serving police officer and that he knew one of the police officers giving evidence, MB. AT stated that he had known MB for about ten years and that on three occasions they had worked on the same incident, although not in the same team. They had never worked at the same station and did not know each other socially. The defence made an application to discharge AT but the judge rejected the application. AT subsequently became the jury foreman.

The applicants appealed their conviction arguing that the jury which convicted them was not impartial, because of the presence of the police officer. In March 2008, the Court of Appeal upheld the applicants' conviction. It referred to a recent change introduced by the Criminal Justice Act 2003 which had permitted persons in certain occupations which were previously ineligible for jury duty, including police officers, to sit on juries. It therefore considered that police officers could not be considered solely by reason of their occupation to be biased in favour of the prosecution. As the police officer sitting as juror in the applicants' case had not had any connection with the prosecution of the case, no violation of Article 6 arose.

The applicants were refused leave to appeal to the House of Lords in June 2008.

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

Complaints, procedure and composition of the Court

Relying on Article 6 § 1, the applicants complained that the presence of a police officer on the jury denied them the right to a fair trial.

Mr Hanif's application was lodged with the European Court of Human Rights on 13 October 2008 and Mr Khan's application was lodged on 15 December 2008. Given their similar background, the Court decided to join them.

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

Lech **Garlicki** (Poland), *President*,
David Thór **Björgvinsson** (Iceland),
Nicolas **Bratza** (the United Kingdom),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta), *Judges*,

and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

The Court referred to its consistent case-law to the effect that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and the accused and emphasised the need to ensure that juries are free from bias and the appearance of bias.

It noted that the the Criminal Justice Act 2003, which for the first time allowed police officers to serve in juries in England and Wales, was also a departure from the rule followed in a number of other jurisdictions which have trial by jury. Of the jurisdictions surveyed by the Court,² only two permitted police officers to serve on juries³ and in both, it was possible to challenge the inclusion of jurors without providing any reasons for the challenge. Recent public consultations in a number of jurisdictions⁴ had shown support for the continued exclusion of police officers from jury service. The Court therefore considered that the effect of the amendment in the circumstances of the case required particularly careful scrutiny.

Mr Hanif's defence had depended to a significant extent upon his challenge to the evidence given by the police officers, including MB. There was therefore a clear dispute between the defence and the prosecution regarding the credibility of the evidence of the police officers. The Court considered that where there was an important conflict regarding police evidence, and a police officer who was personally acquainted with the police officer giving the relevant evidence was a member of the jury, that juror might, favour the evidence of the police. In the present case, although the juror and the witness were not from the same police station, AT had known MB for ten years and had worked with him on three occasions. The Court accordingly found that Mr Hanif had not been tried by an impartial tribunal, in violation of Article 6 § 1.

The applicants had been co-defendants in one set of criminal proceedings and had been convicted by the same jury. The Court therefore considered that, having found in its examination of Mr Hanif's complaint that the jury could not be considered to constitute

² Scotland, Northern Ireland, Ireland, Malta, France, Belgium, Norway, Austria, New Zealand, Australia, Canada, New York and Hong Kong.

³ Belgium and New York.

⁴ Scotland, Ireland, New Zealand, Australia, Hong Kong.

an “impartial tribunal” for the purpose of Article 6 § 1 in light of AT’s presence, it would be artificial to reach a different conclusion regarding the “tribunal” which had tried Mr Khan. Thus the Court considered that there had also been a violation of Article 6 § 1 in respect of Mr Khan.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court decided that the finding of a violation of Article 6 constituted sufficient just satisfaction and rejected the applicants’ claims in respect of non-pecuniary damage. However it held that the United Kingdom was to pay Mr Hanif 4,500 euros (EUR) and Mr Khan EUR 2,000 in respect of costs and expenses.

The judgment is available only in English.

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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.