EUROPEAN COMMISSION OF HUMAN RIGHTS

FIRST CHAMBER

Application No. 22299/93

David Gregory

against

the United Kingdom

REPORT OF THE COMMISSION

(adopted on 18 October 1995)

TABLE OF CONTENTS

Page

I. INTRODUCTION
(paras. 1-16) 1

A. The application
(paras. 2-4) 1

B. The proceedings
(paras. 5-11). 1

C. The present Report
(paras. 12-16) 2

II. ESTABLISHMENT OF THE FACTS
(paras. 17-28). 3

A. The particular circumstances of the case
(paras. 17-22) 3

B. Relevant domestic law and practice
(paras. 23-28) 4

III. OPINION OF THE COMMISSION
(paras. 29-58). 7

A. Complaints declared admissible
(para. 29) 7

B. Points at issue
(para. 30) 7

C. Article 6 of the Convention
(paras. 31-53) 7

CONCLUSION
(para. 54) 11

D. Article 14 in conjunction with Article 6
of the Convention
(para. 55) 11

CONCLUSION
(para. 56) 11

E. Recapitulation
(paras. 57-58) 12

TABLE OF CONTENTS

Page

DISSENTING OPINION OF Mr. C.L. ROZAKIS,
Mrs. J. LIDDY AND Mr. E. BUSUTTIL 13

APPENDIX I: PARTIAL DECISION OF THE COMMISSION AS TO THE
ADMISSIBILITY OF THE APPLICATION 15

APPENDIX II: FINAL DECISION OF THE COMMISSION AS TO THE
ADMISSIBILITY OF THE APPLICATION 20

I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights and of the procedure before the Commission.

A. The application

2. The applicant is a British citizen, born in 1966 and is detained in HM Prison, Leyland, Lancashire. He was represented before the Commission by E. Abrahamson, a Solicitor practising in Liverpool.

3. The application is directed against the United Kingdom. The respondent Government were represented by Ms. S. Dickson, Agent, Foreign and Commonwealth Office.

4. The case concerns the impartiality of the jury which found the applicant guilty of robbery. The applicant invokes Articles 6 and 14 of the Convention.

B. The proceedings

5. The application was introduced on 7 July 1993 and registered on 21 July 1993.

6. On 19 October 1993 the Commission (First Chamber) decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on the admissibility and merits of the applicant's complaints under Articles 6 and 14 of the Convention. It declared the remainder of the application inadmissible.

7. The Government's observations were submitted on 6 April 1994 after two extensions of the time-limit fixed for this purpose. The applicant replied on 24 June 1994 after one extension of the time-limit. On 17 May 1994 the Commission granted the applicant legal aid for the representation of his case.

8. On 11 January 1995 the Commission decided to hold a hearing of the parties. The Government submitted supplementary observations dated 23 March 1995 and the applicant submitted documentation by letters dated 22 and 24 March and 4 April 1995. The hearing was held on 5 April 1995. The Government were represented by Ms. S. Dickson, Agent, Foreign and Commonwealth Office, Mr. N. Garnham, Counsel together with Mr. R. Heaton, Mr. J. Toon and Ms. A. McKenna, as advisers. The applicant was represented by Mr. P. Herbert, Counsel and Mr. E. Abrahamson, Solicitor.

9. On 5 April 1995 the Commission declared the remainder of application admissible.

10. The text of the Commission's decision on admissibility was sent to the parties on 28 April 1995 and they were invited to submit such further information or observations on the merits as they wished. The Government were also requested to respond to the first question which had been raised at the oral hearing. The Government responded to this latter question on 23 May 1995 and did not submit any further observations. By letter dated 11 May 1995 the applicant adopted a document previously submitted as its further observations.

11. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis upon which such a settlement can be effected.

C. The present Report

12. The present Report has been drawn up by the Commission (First Chamber) in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

13. The text of this Report was adopted on 18 October 1995 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

14. The purpose of the Report, pursuant to Article 31 of the Convention, is:

(i) to establish the facts, and

(ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

15. The Commission's decisions on the admissibility of the application are attached hereto as Appendices I and II.

16. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

17. On 26-28 November 1991 the applicant, who is black, was tried for robbery by the Crown Court at Manchester. The applicant was legally

represented at the trial. At 10.46 am, on 28 November 1991, the jury retired and returned at 12.28 pm when a handwritten note was handed to the trial judge. It read:

> "JURY SHOWING RACIAL OVERTONES 1 MEMBER TO BE EXCUSED".

18. In the absence of the jury, the trial judge consulted counsel for the prosecution and defence about a suitable response to the note. It is the recollection of both counsel that counsel for the defence asked the judge to discharge the jury. It is, however, the recollection of the judge that both counsel agreed to the course of action he proposed. The jury returned at 12.47 pm. The trial judge redirected the jury, asking the jury on a number of occasions whether they understood what he was saying. He stated, inter alia, as follows:

> "Everybody has preconceived ideas and thoughts but you are brought here from twelve different backgrounds expecting to apply your twelve different minds to the problems that are put before you. ... you decide this case according to the evidence and nothing else in the case. Any thoughts or prejudice of one form or another, for or against anybody, must be put out of your minds. You decide this case on evidence. It is the evidence alone which decides the case. ... You are the judges and you decide it on the evidence, and weighing the individuals as you saw them and allowing no other factor to influence your decision, but your decision about the quality of the evidence and the way in which a particular individual you are considering, treating them all alike and making no distinction whether a person is a defendant or otherwise, where he lives, where he comes from. ... I am certainly not going to discharge any member of the jury because he or she may wish <me> to do so because they dislike certain overtones in the conversation. Decide this case according to the evidence. Members of the jury, I am not saying you should be biased in favour or against it. Look at the way it was given. Decide the case that way and no other. That is your sworn duty. I expect you to abide by your sworn duty."

19. The jury retired again at 12.50 pm. At 2.21 pm the jury, being unable to reach a unanimous verdict, were called back by the trial judge who told the jury that the time had come when he could accept a verdict of at least a majority of ten. The jury retired again at 2.24 pm. At 3.27 pm the jury were still undecided and they were called back again. The trial judge further directed the jury as follows:

> "Members of the jury, each of you has taken an oath to reach a true verdict according to the evidence. Remember that is the oath you took two days ago. Not one of you must be false to that oath. You do have a duty, not only as individuals but collectively as a jury. That, of course, is the strength of the jury system. So each of you when you go into your jury room take with you your individual experience and wisdom. ... Your task is to pool that experience and wisdom. You must do that by giving your views and listening to the views of other people. Of necessity there will be discussion. ... There has got to be argument and there has got to be give and take within the scope of the oath that each of you have taken. That is the way you achieve agreement."

20. At 4.06 pm the jury returned and delivered a 10-2 majority verdict finding the applicant guilty. He was sentenced to six years imprisonment.

21. In December 1991 the applicant applied to the Court of Appeal for leave to appeal against conviction on the basis that the trial judge should have conducted some enquiry with a view to acceding to the

request contained in the jury note that one of their number be discharged. The application was heard and refused by a single judge of that court on 28 February 1992. The single judge noted that it would have been "entirely inappropriate" for the trial judge to have conducted an enquiry. He further stated that:

> "The learned judge dealt with the novel and delicate situation presented by the jury note with tact and sensitivity. It would have been entirely inappropriate for him to have conducted some sort of enquiry. There was no material irregularity at your trial."

22. On 20 May 1992 the applicant renewed his application to the Court of Appeal for leave to appeal against conviction. This application was refused by the full court on 19 January 1993. It observed, inter alia, as follows:

> "Matters of this kind raise delicate issues. The jury system does require an element of give and take after proper directions from the judge. In our judgment His Honour Judge Hammond dealt with this matter sensitively, sensibly and correctly, and cannot be faulted for a conclusion that the jury should continue the deliberations which they had given their oath to undertake. We, therefore, find no ground for complaint and we dismiss this application."

B. Relevant domestic law and practice

The respective roles of the trial judge and jury

23. The trial judge is the arbiter of issues of law and must ensure that the trial is properly conducted according to the law. He is required at the end of a trial, inter alia, to sum up the evidence, to direct the jury to disregard evidence which is inadmissible, to remind juries of their function, to explain any law which the jury is required to apply and to ask the jury to reach a verdict on the evidence they have heard.

24. The jury, consisting of twelve members who have sworn to "faithfully try the defendant and give a true verdict according to the evidence", is the sole arbiter of fact. At any time during their deliberations the jurors may send a note to the trial judge asking for further assistance or clarification. On receipt of the jury note the established practice is for the trial judge to show the jury note to counsel for the prosecution and defence and to consult those persons on a suitable course of action in response to the jury note. The options available to the trial judge, at that stage, are as follows:

(a) To give the jury a further direction; or

(b) To discharge up to three jurors and to allow the trial to continue with the remaining jurors; or

(c) To discharge the entire jury and order a retrial before a fresh jury.

(d) It is also open to a trial judge to enquire of a jury as a whole whether they are capable of bringing in a verdict on the evidence.

25. Section 8(1) of the Contempt of Court Act 1981 states that it is a contempt of court to obtain, disclose or solicit any particulars of any statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

The law on bias

26. The case of R v. Gough ([1993] 2 All ER 673) re-stated and clarified the law on bias which was applicable at the time of the conviction of the applicant. If the possibility of bias on the part of a juror comes to the attention of the trial judge in the course of a trial, the trial judge should consider whether there is actual bias or not (a subjective test). If this has not been established, that trial judge or appeal court must then consider whether there is a "real danger of bias affecting the mind of the relevant juror or jurors" (an objective test). In this latter respect Lord Goff, in the above-mentioned Gough case, stated as follows:

> "... I think it is unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court, in such cases as these personifies the reasonable man; and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. ... I would prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias."

27. The Criminal Justice Act 1991 was enacted on 1 October 1991 and section 95 of that Act obliges the Secretary of State to publish each year such information as he considers necessary for the purpose of, inter alia, facilitating the performance by persons, engaged in the administration of criminal justice, of their duty to avoid discriminating against any persons on the ground of race.

28. In March 1991 the Lord Chancellor set about establishing an Ethnic Minorities Advisory Committee as a sub-committee of the Judicial Training Board and by 10 November 1993 this sub-committee held its first seminar on ethnic minority issues for members of the senior judiciary. Race awareness training for full and part time members of the judiciary began in early 1994 and is the largest single judicial training exercise ever conducted in the United Kingdom.

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

29. The Commission has declared admissible the applicant's complaints in relation to the lack of impartiality of the jury that convicted him and in respect of the treatment by the court of the question of racial bias which arose.

B. Points at issue

30. Accordingly, the issues to be determined are whether there has been a violation of :

- Article 6 (Art. 6) of the Convention; and
- Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention

in relation to the applicant's trial and conviction.

C. Article 6 (Art. 6) of the Convention

31. Article 6 (Art. 6) of the Convention, insofar as is relevant,

reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

32. The applicant essentially makes the case that it was clear from the jury note that there was, at the very least, a strong objective indication of racial bias within the jury. The extent of the bias was not clear from the terms of the jury note, it being possible that one, more or all of the members of the jury were showing the overtones to which the note referred. Therefore, the trial judge should have made an enquiry of the author of the note as to the meaning of the note in order to establish the most appropriate course of action. Furthermore this power of enquiry is implicit in the trial judge's power to discharge a number of the jurors.

33. The applicant submits that by redirecting the jury as he did, the trial judge thereby formed a view as to how he would deal with the issue of racism in the jury when he was not aware of the precise extent of the problem. The Court of Appeal's review of the matter was equally flawed as that court was similarly unaware of the precise meaning of the jury note. Therefore, according to the applicant, in failing to make this enquiry the trial judge neither applied the subjective test (for actual bias) nor the objective test (for a real danger of bias), which tests are required in Convention and domestic law.

34. Alternatively, the judge could have, at the very least, followed the procedure adopted by a County Court judge who received a similar jury note in a recent domestic case (R v. Batth and others, 6 March 1995). In that case the jury's further deliberation on the case was adjourned pending the jurors' reflection and feedback on whether they felt able to return a verdict on the evidence.

35. In any event, the applicant does not accept that judges' directions are effective in preventing expressed racism influencing a verdict and the applicant relies, inter alia, on psychiatric evidence in this respect. The applicant would distinguish the Nielsen case (No. 343/57, Dec. 15.3.61, Yearbook 4, p. 568) where the Commission found that a redirection sufficed to guarantee the impartiality of the jury. The applicant points out that, in that case, the biased comment was made by an expert witness giving evidence in open court and the judge was therefore aware of the precise nature and extent of the expressed bias and was accordingly in a position to evaluate the sufficiency of a redirection to the jury with all of the pertinent facts to hand.

36. Finally, the applicant refers, inter alia, to the increasing acknowledgement in recent years of the need to combat the existence of racism within the United Kingdom's criminal justice system by legislative (section 95 of the Criminal Justice Act 1991) and administrative (judicial training) measures. The applicant points to the fact that none of the judges involved in his case received any such training nor made any reference, in the directions to the jury or in the refusal of leave to appeal, to their obligations under section 95 of the Criminal Justice Act 1991.

37. The Government's main contention is that the principles followed by the domestic courts as regards the question of bias mirror those set down by the Convention organs and that these principles were correctly applied in the present case by the trial judge. The latter's actions were endorsed by the Court of Appeal which has the power to set aside a conviction if it were wrong in law, if there was a material irregularity in the course of the trial or if the conviction was unsafe

or unsatisfactory.

38. Alternatively, if the judge's assessment must be reviewed, the Government submit that there was no proof of actual bias (the subjective test) and no objectively justifiable fear of bias. In this latter regard, the proceedings must be looked at as a whole including the length of time the judge had spent with the jury during the trial, his consultation with counsel, his strong redirection to the jury, the lack of any further query of a similar nature from the jury and the safeguard of the Court of Appeal.

39. In particular, the Government point out that any enquiry by the trial judge of the jurors in respect of the jury note would amount to seeking to discover the terms and nature of discussions between jurors which enquiry is prohibited, for sound reasons, by domestic law. (It is, however, accepted by the Government that it may be proper to enquire of a jury as a whole whether they are able to bring in a verdict according to the evidence). In this respect, the Government rely on the domestic cases of, inter alia, R v. Gough (1993, 2 AER p. 673), R v. Orgles and Another (93 Cr. App. R 185) and R v. Young (TLR 30.12.94) together with section 8(1) of the Contempt of Court Act 1981. This prohibition, according to the Government, does not threaten the objectives of Article 6 (Art. 6) of the Convention.

40. Furthermore, the Government submit, inter alia, that juries represent the collective judgment and sense of the community and take an oath to give a verdict according to the evidence. In addition, while accepting that jurors form part of the "tribunal", an individual juror should not be regarded in the same way as a judge. The trial judge is in a position of influence over a jury and can, therefore, neutralise any risk of bias by directions to the jury as was recognised by the above-cited Nielsen case.

41. The Commission recalls that, according to the constant case-law of the Convention organs, the existence of impartiality must be determined according to a subjective test namely, on the basis of a personal conviction of a particular judge in a given case - personal impartiality being assumed until there is proof to the contrary (see, for example, Eur. Court H.R., Padovani judgment of 26 February 1993, Series A no. 257-B, P. 20, paras. 25-26).

42. In addition, an objective test must be applied. It must be ascertained whether sufficient guarantees exist to exclude any legitimate doubt in this respect. Even appearances may be important; what is at stake is the confidence which the court must inspire in the accused in criminal proceedings and what is decisive is whether the applicant's fear as to a lack of impartiality can be regarded as objectively justifiable (Eur. Court H.R., De Cubber judgment of 26 October 1984, Series A no. 86, p. 14, para. 26 and Padovani judgment, loc. cit., p. 20, paras. 25 and 27). In addition and contrary to the Government's submission in this respect, these principles apply equally to each juror as the sole arbiters of fact (Eur. Court H.R., Holm judgment of 25 November 1993, Series A no. 279-A, p. 14, para. 30 and, mutatis mutandis, No. 19874/92, Ferrantelli and Santangelo v. Italy, Comm. Rep. 2.3.95, unpublished).

43. Furthermore, given that juries in the United Kingdom deliberate in private, give no reasons for their decisions and that there is, at the very least, a strong inhibition on enquiring about the nature of juror discussions, it is not possible to adduce evidence as to the subjective impartiality on the part of one or more jurors. In such circumstances additional importance would therefore attach to ensuring that the impartiality of the jury is, "by other means", objectively guaranteed (No. 14191/88, Holm v. Sweden, Comm. Rep. 13.10.92, Series A

no. 279-A, p. 26, para. 64 and No. 22399/93 and Pullar v. the United Kingdom, Comm. Rep. 11.1.95, p. 7 para. 39).

44. Finally, the Commission refers to its recent finding of a violation in a case similar to the present case (No. 16839/90, Remli v. France, Comm. Report 30.11.94, unpublished). However, in the Remli case, the failure of the trial court to examine or check in any way a statement presented to that court, about a racist comment made by a juror prior to being sworn in, was central to the finding of a violation.

45. In the present case, the trial judge did deal with the issues raised by the jury note by redirecting the jury. The question to be decided therefore is whether, in the circumstances of this case, the means employed by the trial judge were sufficient to exclude any legitimate doubt as to the impartiality of the jury within the meaning of Article 6 (Art. 6) of the Convention.

46. On the one hand, the Commission notes the serious nature of the issue to which the jury note referred. In addition, the Commission considers that the trial judge could not have known of the nature or extent of the "racial overtones", it being possible that the note could have been evidence of the over sensitivity of a juror to comments made by fellow jurors or, on the contrary, of racism expressed by one, more or indeed all of the members of the jury. Furthermore, the trial judge had a number of options on receipt of the jury note which he did not take. He had the power to discharge up to three jurors, to discharge the entire jury or to enquire of the jury as a whole on whether they felt able to return a verdict on the evidence alone.

47. On the other hand, the Commission notes that the trial proceeded over three days and considers that the trial judge was well placed to evaluate the jurors by his interaction with them over that period. Having received the jury note the trial judge consulted with counsel for both the prosecution and defence. He then proceeded to redirect the jury. The trial judge referred to the fact that he had received the jury note and while he did not read out its contents, the judge asked the jury on a number of occasions during the redirection whether they understood the points he was making.

48. The redirection was careful and detailed. The trial judge charged the jurors to put any thoughts or prejudice of one form or another, for or against anybody, out of their minds. He directed the jury to "decide this case on evidence. It is the evidence alone which decides the case. ... You are the judges and you decide it on the evidence, and weighing the individuals as you saw them and allowing no other factor to influence your decision, but your decision about the quality of the evidence and the way in which a particular individual you are considering, treating them all alike and making no distinction whether a person is a defendant or otherwise, where he lives, where he comes from."

49. Subsequently, the jury was called back twice and came back a third time with a majority verdict. However, during this interaction with the trial judge there was no further suggestion of any difficulty about racial comment or overtones in the jury. The Commission notes that the second redirection given to the jury was a standard form direction used when the jury has been given a majority verdict direction and cannot decide by the required majority. The Commission does not, therefore, consider that the further redirection was indicative of any perception by the trial judge of further problems with racial overtones or comment within the jury.

50. Furthermore, the Commission finds it indicative of the weight to

be attached to the judge's assessment as to the most appropriate response to the jury note that, in domestic law, the trial judge must assess the presence of bias in the jury subjectively and must also be satisfied that there is no real danger of bias. The case was then reviewed by a single judge and by the full Court of Appeal, which tribunals did not find that any error of law had been made by the trial judge in this respect and found that the trial judge had handled the matter sensitively and correctly.

51. The Commission finds that the nature of the trial judge's reaction, the lack of any further expressed difficulty by the jury or jurors taken against the background of the domestic tests to be applied for bias sufficed to dispel any legitimate doubts as to the impartiality of the jury which convicted the applicant.

52. The Commission also notes the applicant's submissions as regards distinguishing the above-cited Nielsen case but considers that that case is indicative of a particular set of circumstances, not necessarily exhaustive, where a judge's direction to the jury can dispel legitimate doubts as to that jury's impartiality. The Commission considers that, in the circumstances of this case, this trial judge's redirection sufficed to dispel any legitimate doubts as to the impartiality of the jury which convicted the applicant.

53. The Commission therefore finds that the applicant's fears in this regard cannot be considered to be objectively justified. Consequently, the Commission is of the opinion that the applicant's case was determined by an impartial tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

CONCLUSION

54. The Commission concludes, by 8 votes to 3, that in the present case there has been no violation of Article 6 (Art. 6 of the Convention.

D. Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention

55. The applicant complains under Article 14 (Art. 14) of the Convention that the trial court treated the issue of racial bias less seriously than it would have other forms of bias. The Government submit, inter alia, that the domestic tests applied for racial bias are the same as those applied in relation to other forms of bias. The Commission notes that no evidence has been adduced to show that the trial judge treated the issue of racial bias less seriously than he would have other forms of bias. The Commission also notes that Article 14 (Art. 14) has no independent existence and, accordingly, regards the applicant's complaint as being under Article 14 (Art. 14) in conjunction with Article 6 (Art. 6) of the Convention and as being essentially the same as that made under Article 6 (Art. 6) of the Convention itself. Accordingly, the Commission considers that this complaint does not give rise to any separate issue.

CONCLUSION

56. The Commission concludes, unanimously, that the applicant's complaint under Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention does not give rise to any separate issue.

E. Recapitulation

57. The Commission concludes, by 8 votes to 3, that in the present case there has been no violation of Article 6 (Art. 6) of the

Convention (para. 54).

58. The Commission concludes, unanimously, that the applicant's complaint under Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention does not give rise to any separate issue (para. 56).

Secretary to the First Chamber   President of the First Chamber

(M.F. BUQUICCHIO)   (C.L. ROZAKIS)

(Or. English)

DISSENTING OPINION OF
Mr. C.L. ROZAKIS, Mrs. J. LIDDY AND Mr. E. BUSUTTIL

In our opinion this application gives rise to a violation of Article 6 of the Convention.

We note the reference by the majority to the recent finding of a violation in the Remli application, a case similar to the present case (No. 16839/90, Remli v. France, Comm. Report 30.11.94, unpublished) and agree that it was the failure of the trial court in that case to examine or check in any way a statement presented to the court (about a racist comment made by a juror prior to being sworn in) which was central to the finding of a violation.

We also agree that the question to be decided in the present case is whether, in the circumstances of this case, the means employed by the trial judge were sufficient to exclude any legitimate doubt as to the impartiality of the jury within the meaning of Article 6 of the Convention.

However, we find the issue to which the jury note referred to be a serious one and consider the ambiguity of the jury note central to the question of objective impartiality in this case. It was possible that the note could have been evidence of the over sensitivity of a juror to comments made by fellow jurors. However, it could equally be interpreted as referring to racist comments expressed by one, more or indeed all of the members of the jury.

In this respect, we consider that by redirecting the jury, the trial judge was implicitly deciding against the necessity of exercising his powers to discharge up to three jurors, to discharge the entire jury or to adjourn the jury's further deliberations pending further reflection and feedback as to their ability to bring in a verdict on the evidence alone.

The trial judge accordingly made a decision to redirect the jury without knowing the extent or gravity of the "racial overtones" referred to in the jury note. Moreover, we consider that if we were to accept the Government's position as to the absence of any reason to doubt the jury's impartiality, this would necessarily imply that we conclude as to the precise meaning of the jury note, a fact which was not and can not be established. While a single judge of the Court of Appeal and the full Court of Appeal reviewed the case, that court was similarly unaware of the precise meaning of the jury note.

While we note that the second redirection given to the jury was a standard form direction used when the jury cannot decide by the required majority, a juror with racial prejudice could have drawn some comfort from the following words:

"So each of you when you go into your jury room take with you your individual experience and wisdom. ... Your task is to pool

that experience and wisdom."

Furthermore, the present case can be distinguished from the Nielsen case referred to by the Government (No. 343/57, Dec. 15.3.51, Yearbook 4, p. 568) where the Commission found that a redirection sufficed in guaranteeing the impartiality of the jury. In that case, the biased comment was made by an expert witness giving evidence in open court and thus did not emanate from the jury. In addition, the judge was aware of the precise nature and extent of the expressed bias and was, therefore, in a position to evaluate the sufficiency of a redirection to the jury with all of the pertinent facts to hand.

We are also cognisant of the recent developments in the United Kingdom concerning the training of members of the judiciary in race awareness and note, in particular, section 95 of the Criminal Justice Act 1991 which obliges the Home Secretary to publish yearly information for the purposes of, inter alia, facilitating courts in their duty to avoid discriminating against any person on racial grounds.

Accordingly, we conclude that, in the circumstances of this case, the trial judge's redirection to the jury was not sufficient to dispel doubts as to the impartiality of the jury which convicted the applicant and that the applicant's fears in this regard can be considered as objectively justified.

Consequently, we are of the opinion that the applicant's case was not determined by a tribunal which can be regarded as impartial within the meaning of Article 6 para. 1 of the Convention.