

Article 6 breaches prove no magic bullet for convictions on appeal (R v Abdurahman)

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Corporate Crime analysis: The Court of Appeal considered the safety of the conviction of Abdurahman who had assisted one of the 21/7 London bombers after the event. It reaffirmed that its purpose is to objectively appraise the safety of a conviction looking to all the circumstances, notwithstanding in this case a finding by the Grand Chamber of the European Court of Human Rights (ECtHR) that Mr Abdurahman's rights under Article 6 of the European Convention on Human Rights (ECHR) (right to a fair trial) had been breached. The court held that despite his initial interview having been conducted without many of the protections afforded by the Police and Criminal Evidence Act 1984 (PACE 1984) (including the omission of a caution and absence of legal representation) Mr Abdurahman's conviction was safe. Written by Rebecca Hill, barrister at 5 St Andrew's Hill.

R v Abdurahman [\[2019\] EWCA Crim 2239](#), [\[2020\] All ER \(D\) 13 \(Jan\)](#)

What are the practical implications of this case?

The decision in *Abdurahman* does not change the law, but rather reinforces and extends an existing position. It has long been the case that breaches of [PACE 1984](#) will not necessarily result in exclusion of improperly obtained evidence but this decision makes clear that, even where those breaches are so grave as to offend the ECHR, art 6, the focus must remain on their impact. The Court of Appeal need not be bound by a decision of the ECtHR but may undertake its own analysis with particular focus on context. Regard should be had to the reasons for the breaches and whether they result in irretrievable prejudice in the context of the case as a whole. If they do not, the evidence which results from them need not be excluded, nor need 'fruit from the poisoned tree'. Thus, whilst it is easy for both defendants and practitioners to be exercised by police malpractice or misconduct, a cautious approach must be adopted as to the effect this will ultimately have on a case.

What was the background?

Mr Abdurahman's conviction arose from the assistance he afforded to one of the 21/7 London bombers by providing him with accommodation and practical support after the failed attack.

Mr Abdurahman was identified as a possible witness on 25th July and, following a period of surveillance, was taken to a police station and interviewed (as a witness). During the course of preliminary questioning, he gave an account incriminating himself (the first statement) however police chose not to treat him as a suspect and thus he continued to be questioned without either legal advice or a caution. At his trial, following argument to exclude pursuant [PACE 1984, ss 76 and 78](#), the judge permitted this first statement and evidence secured consequent upon it to be adduced before the jury. Mr Abdurahman was convicted of assisting an offender contrary to [section 4\(1\)](#) of the Criminal Law Act 1967 and failing to give information about acts of terrorism contrary to [section 38B\(2\)](#) of the Terrorism Act 2000. He received a ten-year sentence which was reduced to eight on appeal.

This appeal against conviction followed a majority decision of the Grand Chamber of the ECtHR that Mr Abdurahman's had been 'irretrievably prejudiced', and his right to a fair trial pursuant to ECHR, art 6 breached, by the police decision not to caution him and to restrict his access to legal advice. Consequently, the Criminal Cases Review Commission (CCRC) referred the case on the basis there was a 'real possibility' that the first statement would now be regarded by the Court of Appeal as inadmissible.

What did the court decide?

The court affirmed that its primary function, determined by [section 2\(1\)](#) of the Criminal Appeal Act 1968 as amended, remains simply to determine whether a conviction is 'unsafe'. The mere fact of an ECHR, art 6 breach does not necessarily mean that an individual has been wrongly convicted.

In the instant case, the court concluded (contrary to the Grand Chamber's finding) that there had been compelling reasons for restricting Mr Abdurahman's access to legal advice when first questioned as

he was providing information of critical importance to police priorities at the time. Even if there had not been, however, there was no irretrievable prejudice to him. Mr Abdurahman gave his first statement voluntarily and did not seek to retract or amend it materially once he had been provided with legal representation. The fact that some of the evidence in the case was the ‘fruit’ of that first statement did not make it inadmissible. [PACE 1984, ss 76](#) and [78](#) afforded a procedural safeguard to the fairness of proceedings. Furthermore, leaving aside the first statement, there was sufficient additional evidence going to Mr Abdurahman’s guilt that the case against him was ‘overwhelming’.

Case details

- Court: Court of Appeal, Criminal Division
- Judge: Dame Victoria Sharp P, Garnham and Chamberlain JJ
- Date of judgment: 17 December 2019

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