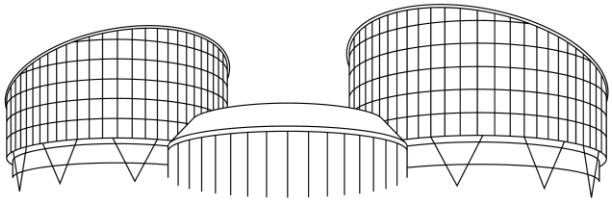

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Applications nos. 32844/10 and 33510/10
Michael Alexander SECKERSON against the United Kingdom and
TIMES NEWSPAPERS LIMITED against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 24 January 2012 as a Chamber composed of:

Lech Garlicki, *President*,
David Thór Björgvinsson,
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić, *judges*,
and Lawrence Early, *Section Registrar*,

Having regard to the above applications lodged on 4 and 3 June 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are Mr Michael Alexander Seckerson ("the first applicant") and Times Newspapers Limited ("the second applicant"). The first applicant is a British national who was born in 1943 and lives in Maidenhead. He is represented before the Court by Mr M. Uddin, a lawyer practising in Slough. The second applicant is the proprietor and publisher of *The Times* newspaper and is a company registered in England. It is represented before the Court by Mr M. Stephens, a lawyer practising in London.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The background facts

3. The first applicant was the foreman of the jury at the trial of a childminder, K.H., for the manslaughter of a baby who sustained fatal injuries while in her care. The prosecution case was that she had shaken the baby so violently that she had died. The prosecution did not call any eye witnesses to testify that K.H. had injured the child but instead relied on expert medical evidence as to how the injuries were sustained.

4. The trial lasted for five to six weeks and the jury deliberated its verdict over a period of about three days. K.H. was convicted by a majority of ten of the twelve members.

5. In late 2007, following the conviction, the first applicant contacted *The Times* to express grave concerns about the trial and the conviction.

6. On 19 December 2007 *The Times* published two articles based on the first applicant's comments. One article appeared on the front page in the following terms:

> "**Jurors question guilt of killer childminder**
>
> The role of expert witnesses in baby death trials was called dramatically into question last night after two jurors spoke out to challenge the conviction of a childminder for killing a baby in her care. Senior judges and law officers faced calls yesterday for a fresh review of the role of expert witnesses in baby-death cases.
>
> In an unprecedented move, the jurors disputed the recent conviction of [K.H.] 42, a mother of two married to a former police officer, for shaking 11-month-old [M.S.] so violently that the baby was left blind and irreparably brain-damaged. She died days later.
>
> The jury foreman, who cannot be named for legal reasons, has told The Times that he believes [K.H.] is innocent. 'A case relying on circumstantial evidence and forensic opinion based on evidential proof from other cases should never have reached a court.'
>
> The case comes amid increasing concern over cases involving baby deaths that turn on the evidence of medical experts. [S.C.], [A.C.] and [T.P.] were all accused of killing their children, only later to be found innocent. [S.C.], a solicitor who was finally released from prison after three years, died in March from alcoholism and psychological trauma caused by her ordeal.
>
> ... [T]he chairman of Justice for Families, called yesterday on the Lord Chief Justice and Attorney-General to set up a fresh inquiry into the way that courts use medical expert evidence. 'Jurors think that [K.H.] is innocent,' he said. 'When we are asking medical expert witnesses to diagnose innocence or guilt, we need more certainty than

is the case for most medical treatment — a false diagnosis of guilt can generally cause far more damage than a false medical diagnosis.'"

7. The second article appeared on the inside pages in the following terms:

"**Jurors break silence to insist childminder did not kill baby**

Two jurors have spoken out to question the guilty verdict in a case last month in which a childminder was jailed for shaking a baby to death.

In an unprecedented move, the two jurors – a man and a woman – say they believe that [K.H.], 42, a childminder and mother, was wrongly convicted of killing 11-month-old [M.S.] by shaking her so violently that she was left blind and brain damaged.

[K.H.], a respected Scout leader, allegedly lost her temper and shook the baby so hard that she was taken to hospital, blind and unconscious. She died two days later.

But the jury foreman, who cannot be named for legal reasons, has told The Times that he does not think the case should ever have come to court.

'A case relying on circumstantial evidence and forensic opinion based on evidential proof from other cases should never have reached a court,' he said. He added: 'I think that although the trial was very carefully run, the case in my view was flawed and the accused innocent.'

He said: 'I think [K.H.'s] heartrending response [she broke down in uncontrolled weeping] to the verdict confirms that it was flawed.'

A second juror named as Carol told BBC Radio 5 Live yesterday: 'I believe a miscarriage of justice has occurred and there's nothing I can do about it.

I don't think you can get a fair outcome. I will never know, as long as I live, whether the verdict was right or not because we have not got all this medical expertise and I think if medics can't decide between themselves, what chance have we got?'

Jurors are prohibited by law from disclosing the secrets of the jury room and the discussions as to how a verdict was reached. But the readiness of two of the 12 in this trial to speak out is an indication of how strongly they feel.

A campaign has already begun by friends and relatives who maintain that [K.H.] is innocent and want to secure her release. She was jailed for three years. And yesterday an MP called for an inquiry into the use of medical experts in trials.

At the time of the trial, some media commentators suggested that the verdict was unjust. They said that it raised a question mark over majority verdicts, implying that given more time the jury might have reached a different verdict.

But the foreman of the jury insisted that the verdict was understandable on the basis of medical expert evidence presented.

[K.H.] qualified as a childminder in 2000 and often had up to eight children in her care at her home in Iver Heath, Buckinghamshire. She had looked after [M.S.] since January 2005, having been recommended to her parents ... by a mutual friend.

On the day [M.S.] died she was described as 'full of energy' although she had been unwell in the weeks before her death.

The jury foreman told The Times that there was no question, as has been suggested, of the jury being rushed. It was given ample time and the 'consensus was taken three minutes after the foreman was voted in. It was 10-2 against, all based on the evidence. After that there was no going back.'

He added: 'The jury majority voted guilty because it could do no other.

'The medical evidence was overwhelming. All the necessary ingredients of what the experts call the "triad" [a collection of features typically caused by shaking that lead to hypoxic-ischaemic brain injury and death] were there.

But many expert witnesses vouchsafe that the literature on shaken baby syndrome is contentious and far from complete. And so who caused the death, or whether anyone did, is not proved. The evidence, whether expert or other, was merely circumstantial – probabilities, therefore uncertainties.'

The juror said that the defence was good; but up against 'the weight of a dozen medical and forensic experts, was clearly on a hiding to nothing.

The circumstances were that of amateurs made to do a professional's job.

Such a complex case was made easier by the judge's excellent, well-rounded summary ... although we were told we could not have a transcript.' Had the jury been given a transcript they might have reached a better verdict, he added.

What was not proved, he said, was who caused the death 'or indeed whether anyone did'.

He added: 'Ultimately the case was decided by laymen and laywomen using that despicable enemy of correct and logical thinking, that wonderfully persuasive device, common sense.'

The outcome has left him disillusioned with the jury system. 'One's peers, however good and true, are generally not up to the job.'

The ... chairman of Justice for Families, called on the Government and the judiciary to set up a review of medical expert evidence. '[K.H.'s] case had been taken up by the Angela Cannings Foundation, who believe that a miscarriage of justice has occurred,' he said.

'This makes it clear that the way in which our courts use expert evidence, and particularly medical expert evidence, has insufficient intellectual rigour. Evidence which is clearly unreliable and based upon pet theories without proper research groundings is accepted as fact in court.'"

2. The contempt of court proceedings

8. Section 8 of the Contempt of Court Act 1981 ("the 1981 Act") prohibits the disclosure of information regarding the deliberations of a jury (see "Relevant domestic law and practice", below).

9. The first applicant was interviewed under caution by the police on 26 February 2008 as a result of the comments he had made regarding the K.H. case. He accepted that he had written an article and given interviews about his experience on the case. However, he explained that his sole intention had been to describe his general experience and that he had had no intention of disclosing any particulars of statements made, opinions expressed or votes cast by members of the jury in the course of their deliberations, nor did he consider that he had done so.

10. The journalist who had written the articles was interviewed by the police on 16 July 2008. She also indicated that she did not believe that anything in the articles rendered her liable for contempt of court. She confirmed that the article had been reviewed by the legal team of *The Times* prior to publication to ensure that it complied with the law.

11. The Attorney General subsequently applied to the Divisional Court for permission to make a committal application against the applicants for their contempt of court on the ground that they had breached section 8 of the 1981 Act. It was alleged that the first applicant had disclosed to the journalist at *The Times* particulars of votes cast, arguments advanced and opinions expressed by members of the jury in the course of their deliberations as to the verdict and that the second applicant had published that information, or some of it, in an article in *The Times* on 19 December 2007. On 20 January 2009 permission was granted and the proceedings were issued on 3 February 2009.

12. At the subsequent hearing, counsel for the Attorney General accepted that for a juror after a trial to express his own views in a general way about the merits or demerits of the jury system would not be a breach of section 8. Similarly, the juror would not breach section 8 by expressing general views about jurors relying on expert evidence. He identified the disclosures in the articles which he alleged infringed section 8 as:

> "... the consensus was taken three minutes after the foreman was voted in. It was 10-2 against, all based on the evidence. After that there was no going back."
>
> "The jury majority voted guilty because it could do no other."
>
> "The medical evidence was overwhelming."
>
> "Ultimately the case was decided by laymen and laywomen using that despicable enemy of correct and logical thinking, that wonderfully persuasive device, commonsense."

13. Counsel for the second applicant, supported by counsel for the first applicant, referred to Article 10 of the Convention and to the right and duty of the press, in the interests of the administration of justice, to tell the public what had happened in court proceedings. He argued that a purposive construction of section 8 was required and that involved limiting breaches to disclosures which interfered with the proper administration of justice. Considered in the context of the article as a whole, the first applicant was using his experience of the K.H. trial to criticise the way in which cases based on medical opinion evidence were tried. It was not a disclosure of confidential information but of information about how the system worked, much of it favourable to the system. Fears were expressed about reliance on expert medical evidence and the expression of such concerns was legitimate. The applicants' counsel accordingly argued that the order sought by the Attorney General would amount to a violation of the applicants' rights under Article 10 of the Convention. There was no 'pressing social need' to curtail the disclosures made and, on the facts of the case, the balance between the Article 10 right and the general community interest came down on the side of freedom of expression.

14. Lord Justice Pill, delivering the judgment of the court on 22 May 2009, found the applicants guilty of contempt of court. He observed that it was not suggested that section 8 was incompatible with Article 10 of the Convention, and observed that this Court had acknowledged the legitimacy of the rule governing the secrecy of jury deliberations in England. He therefore declined to read down the words in section 8 of the 1981 Act, pursuant to the Human Rights Act 1998, in order to interpret restrictively the relevant words contained in that section.

15. The judge accepted that the articles were published in a reputable newspaper, following legal advice given in good faith, and that the first applicant was not harassed to provide his views but had approached the newspaper unprompted. He further accepted that the first applicant was genuinely concerned about the use made of medical evidence in criminal trials, which was an issue of public interest. However, he noted:

> "49. The words used in section 8 in relation to the 'deliberations'; 'statements made', 'opinions expressed', 'arguments advanced', and 'votes cast' appear to me to cover the entire range of a jury's deliberations when considering their verdict or verdicts in the case. Provided the disclosure is in relation to their deliberations in the case, and not about an extraneous matter, it comes within the section."

16. Reiterating the rationale for the need to keep secret the deliberations of the jury as stated in previous cases, he continued:

> "51. ... The jury system has shown itself to be robust in operation and is valued highly in this jurisdiction. Its strength and value depend on the open and frank expression of views between twelve people in the secrecy of the jury room. Confidence to express views in that way depends on the juror's knowledge that the views will not be revealed outside the jury room. Jurors should not be constrained by fears a juror would legitimately have if his friends and neighbours, and the general

public, may come to know of his views, which could be unpopular views. If views were expressed in the hope of their being disclosed, or with an intention to disclose, that would also have a deleterious effect on the quality of deliberations.

52. It is the principle of the secrecy of the jury room which is at stake and which is central to the proper administration of justice in this jurisdiction, as stated in the authorities. It is not necessary to establish that the disclosure has led to injustice in the case concerned. Disclosures must be examined individually if the principle is to be maintained. Disclosures found to be in breach of the section do not obtain cover by being interwoven, whether intentionally or unintentionally interwoven, with expressions of general concern, which may legitimately be made by a juror. They do not obtain cover by the addition of favourable comments about how the jury functioned, as some of the disclosures in this case may have done. Indeed, disclosures incorporating favourable comment about other jurors could constitute a breach."

17. Accordingly, he concluded:

"53. In my judgment, the disclosure of the 10-2 vote was a clear breach of section 8(1). It was a breach as disclosing a vote. Moreover, it revealed the opinions expressed by 10 members of the jury, at an early stage of a long deliberation. The reference to 'no going back' also revealed a firm intention on the part of those 10 members not to change their minds, a revelation of the opinions they held.

54. The paragraph dealing with common sense also constituted a breach. It was disclosed that the majority who convicted used a 'despicable enemy of correct and logical thinking'. That was the foreman's assessment of the opinions of and statements expressed by the majority members and he disclosed them by making those comments. The majority members were, in the opinion of the foreman, guilty of incorrect and illogical thinking, an accusation against them, combined with a disclosure of, their opinions.

55. It is disclosed that the majority members used that 'wonderfully persuasive device, common sense'. That is a disclosure of their approach to the evidence, which necessarily was based on statements they had made or opinions they had expressed during the deliberations. If the foreman's assessment of their opinions was incorrect, it may add to the wrong done to them, but that is not material; the mischief is in the disclosure of the deliberations. It is not necessary to prove that the accusations made against fellow jurors were true.

56. The assumption is made in the foreman's disclosure that common sense is the enemy of correct thinking, and therefore of justice. That assumption can of course be questioned; common sense is generally perceived to be valuable and does not inevitably lead to the acceptance of expert medical evidence. Debate of the merits of common sense is not, however, in point for present purposes. What is relevant is that the disclosures reveal the approach of this jury to the evidence in this case; reliance on common sense and not correct and logical thinking. Whether or not that is a disclosure offensive to the majority members need not be decided; it was a disclosure of their approach, as assessed by the foreman, thereby revealing their opinions. It offended against the secrecy of the jury room, as that concept is viewed in the authorities. The foreman should not have disclosed the approach to the evidence of other jurors. What may be legitimate debate in the course of deliberations should not be revealed outside."

18. As regards the remaining two disclosures about which the Attorney General had complained (see above), the judge found that they were general comments on the strength of the evidence for the prosecution and did not breach the 1981 Act.

19. The first applicant was fined GBP 500. The second applicant was fined GBP 15,000 and ordered to pay costs of GBP 27,436.41.

20. On 18 June 2009 the second applicant sought leave to appeal to the House of Lords. Leave was refused by the newly instituted Supreme Court on 9 December 2009.

3. The debate on the use of expert medical evidence in criminal trials

21. Between 1999 and 2003 three high-profile trials took place concerning the death of children in which expert medical evidence had been critical to the prosecution case. In two of the cases, convictions were handed down at first instance. However, the convictions were subsequently overturned and the medical evidence called into question. These cases were referred to in the front page article published in *The Times*.

22. In January 2005, the Department of Constitutional Affairs published a consultation paper on Jury Research and Impropriety, seeking views on whether there should continue to be a ban on all research into a jury's deliberations. The summary of responses received, published in November 2005, indicated that the majority of respondents were in favour of allowing some degree of research into the jury decision-making process. However, no amendment was made to the 1981 Act.

23. In March 2005 a House of Commons Select Committee published a report on forensic evidence used in criminal trials (*Forensic Science on Trial*, 7th Report of Session 2004–05, HC Paper 96) which recommended an amendment to section 8 of the 1981 Act to permit research into jurors' deliberations.

24. The matter of the death of babies in which the triad of intracranial injuries, considered by most experts to be indicative of non-accidental head injury, or "shaken baby syndrome", was present was also of topical importance, following the review of four convictions by the Court of Appeal in June 2005 which resulted in two convictions being overturned. The Court of Appeal explained in its judgment that while the triad pointed strongly to non-accidental head injury it did not automatically and necessarily lead to such a diagnosis.

25. The criminal case at issue in the present applications had itself received considerable publicity. It had been suggested in the press, prior to the publication of the two articles by *The Times*, that the jury had not been given adequate time to deliberate and that a miscarriage of justice had occurred.

26. In 2009 the Law Commission issued a consultation paper on the Admissibility of Expert Evidence in Criminal Proceedings in England and Wales. The paper noted:

> "2.6 However, the possibility or likelihood of jury deference in relation to complex fields of knowledge gives rise to a danger if there are legitimate questions about the reliability of the expert's evidence. This may be because the expert's field of knowledge is a novel or developing science with little in the way of peer review, or because there are doubts as to the validity of the expert's methodology, hypothesis or assumptions, or for some other reason.
>
> 2.7 The problem is particularly worrying if there is no available expert in the same field who can be called by the opposing party to provide an effective criticism of the expert evidence in question, particularly if the forensic tool of cross-examination (by a non-specialist advocate) would provide only an ineffectual substitute. The jury in such cases may have no real option but to defer to the view of the expert even though his or her testimony may be insufficiently reliable to warrant such deference or, indeed, any consideration at all.
>
> 2.8 A related problem, touched upon in the preceding paragraph, is that the non-specialist individuals involved in the criminal trial process may have an insufficient understanding of the limitations of expert evidence, scientific evidence in particular. They may assume that just because an expert's evidence is presented as 'scientific' it may be taken to be reliable. Certainly there is evidence to suggest that juries may find it difficult to understand or follow cross-examination aimed at revealing flaws in scientific methodology, a problem which is likely to be more acute if the evidence is complex."

B. Relevant domestic law and practice

1. General

27. A jury in England is composed of twelve members, although its number may be reduced to a minimum of nine in the case of the discharge of a member or members because of illness or for some other reason.

28. The jury's verdict is given in open court in the presence of all the jurors and the parties to the proceedings. Majority verdicts are possible. Where a majority verdict is handed down the foreman of the jury must state in open court the number of jurors who agreed to and dissented from the verdict. The minimum majorities possible are 11-1 or 10-2. In the case of a jury which has been reduced in number to ten or eleven members, the minimum permissible majorities are 9-1 or 10-1 respectively. A jury of nine members must be unanimous.

2. Secrecy of jury deliberations

29. Section 8 of the Contempt of Court Act 1981 provides, in so far as relevant:

"Confidentiality of jury's deliberations.

(1) Subject to subsection (2) below, it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

(2) This section does not apply to any disclosure of any particulars–

(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict, or

(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or to the publication of any particulars so disclosed.

..."

3. Relevant case-law

30. In *Attorney-General v. Associated Newspapers Limited and Others* [1994] UKHL 1, the House of Lords held that the word "disclose" in section 8 of the 1981 Act was apt to describe both offending revelations by a juror to a newspaper and the further disclosure of those revelations by their publication in the newspaper, provided that this amounted to a disclosure rather than re-publication of facts already known.

31. In *R. v. Mirza* [2004] UKHL 2, Lord Steyn cited with approval a passage in a judgment of the Canadian Supreme Court in *R v. Pan* 2001 SCC 42 in which Arbour J identified the principal reasons for the common law rule of jury secrecy in the following terms:

"The first reason supporting the need for secrecy is that confidentiality promotes candour and the kind of full and frank debate that is essential to this type of collegial decision making. While searching for unanimity, jurors should be free to explore out loud all avenues of reasoning without fear of exposure to public ridicule, contempt or hatred. This rationale is of vital importance to the potential acquittal of an unpopular accused, or one charged with a particularly repulsive crime. In my view, this rationale is sound, and does not require empirical confirmation.

The Court of Appeal also placed considerable weight on the second rationale for the secrecy rule: the need to ensure finality of the verdict. Describing the verdict as the product of a dynamic process, the court emphasized the need to protect the solemnity of the verdict, as the product of the unanimous consensus which, when formally announced, carries the finality and authority of a legal pronouncement. That rationale is more abstract, and inevitably invites the question of why the finality of the verdict should prevail over its integrity in cases where that integrity is seriously put in issue. In a legal environment such as ours, which provides for generous review of judicial decisions on appeal, and which does not perceive the voicing of dissenting opinions on appeal as a threat to the authority of the law, I do not consider that finality, standing alone, is a convincing rationale for requiring secrecy.

> The respondent, as well as the interveners supporting its position and, in particular, the Attorney General of Quebec, place great emphasis on the third main rationale for the jury secrecy rule – the need to protect jurors from harassment, censure and reprisals. Our system of jury selection is sensitive to the privacy interests of prospective jurors ..., and the proper functioning of the jury system, a constitutionally protected right in serious criminal charges, depends upon the willingness of jurors to discharge their functions honestly and honourably. This in turn is dependent, at the very minimum, on a system that ensures the safety of jurors, their sense of security, as well as their privacy."

COMPLAINT

32. The applicants complained under Article 10 of the Convention that the finding of contempt of court, the fines imposed and the costs ordered were incompatible with their right to freedom of expression.

THE LAW

33. Given their similar factual and legal background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

34. Article 10 provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

35. The applicants submitted that they should not have been found to be in contempt of court and fined as a result of the comments made by the first applicant and published by the second applicant on the important and legitimate issue of the use of expert medical evidence in criminal jury trials and the way in which jurors reacted to such evidence. They accepted that the interferences were prescribed by law and that they pursued a legitimate aim, namely maintaining the authority and impartiality of the judiciary. However, they contended that they were not necessary in a democratic

society, were disproportionate, and were likely to have a profound chilling effect on the ability of the media and jurors to discuss such important issues. Relying on the Court's judgment in The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 65, Series A no. 30, they argued that it was not sufficient that the interference arose because its subject-matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms. The Court had to be satisfied that the interference was necessary having regard to the facts and circumstances prevailing in the specific case before it.

36. The applicants considered that by the time the articles were published in *The Times*, prosecution reliance on expert medical evidence had become a matter of the highest public interest and controversy. They submitted that the two quotes were part of serious reporting which made a significant contribution to a debate of general interest to society, particularly in light of the previous trials concerning medical evidence, the consultation paper published by the Department of Constitutional Affairs in January 2005 and the recommendation of the House of Commons Select Committee in March 2005. The articles were not an account of the deliberations of the jury in the K.H. case; instead, they questioned the functioning of the justice system in this area by reference to the then recently-decided K.H. case. They were published in pursuit of the applicants' duty to purvey ideas and information to the public on matters of public interest, and the publication of the two impugned quotes was justified as part of this public interest reporting.

37. The applicants were further of the view that the comments were wholly innocuous and they considered it inconceivable that their publication could have undermined the administration of justice. In support of their view they explained that over the preceding ten years jurors had begun to comment on and express their serious concerns about high profile trials and verdicts in which they had been involved without the administration of justice being undermined. They pointed to specific examples of well-known instances where such comments had been made and publicised, with no subsequent contempt proceedings being instituted by the Attorney General.

38. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and in that context the safeguards guaranteed to the press are particularly important (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; *Times Newspapers Ltd v. United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 40, 10 March 2009). The press has a pre-eminent role in informing the public and imparting information and ideas on matters of public interest in a State governed by the rule of law (see *Financial Times Ltd and Others v. the United Kingdom*, no. 821/03, § 59, 15 December 2009; *MGN Limited v. the United Kingdom*, no. 39401/04, § 141, 18 January 2011; and *Mosley v. the United Kingdom*, no. 48009/08, § 112,

10 May 2011). Not only does the press have the task of imparting such information and ideas but the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (Observer *and* Guardian, cited above, § 59; Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III; *Gutiérrez Suárez v. Spain*, no. 16023/07, § 25, 1 June 2010; *MGN Limited*, cited above, § 141; and *Mosley*, cited above, § 112). It follows that the most careful of scrutiny under Article 10 is required where measures or sanctions imposed on the press are capable of discouraging the participation of the press in debates on matters of legitimate public concern (Bladet Tromsø *and Stensaas*, cited above, § 64; and *Times Newspapers Ltd*, cited above, § 41) and that particularly strong reasons must be provided for any measure limiting access to information which the public has the right to receive (see *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 31, 27 November 2007; and *Times Newspapers Ltd*, cited above, § 41).

39. The Court reiterates, however, that Article 10 does not guarantee a wholly unrestricted freedom of expression to the press, even with respect to press coverage of matters of serious public concern (see *Times Newspapers Ltd*, cited above, § 42). Article 10 § 2 permits restrictions or penalties which are prescribed by law and are necessary in a democratic society, *inter alia*, for maintaining the authority and impartiality of the judiciary. In particular, the media must not overstep the limits imposed in the interests of the proper administration of justice (Sunday Times, cited above, § 65).

40. It is for the national authorities to assess in the first place whether there is a "pressing social need" for any restriction and, in making their assessment, they enjoy a certain margin of appreciation (see *Financial Times Ltd and Others*, cited above, § 60; and Sunday Times, cited above, § 59). It follows that in examining whether the interference was justified, it is not the role of this Court to substitute its views for those of the national authorities but to review the case as a whole, in the light of Article 10, and consider whether the decision taken by national authorities fell within the margin of appreciation allowed to the member States in this area (*Handyside v. the United Kingdom*, 7 December 1976, § 50, Series A no. 24; *Times Newspapers Ltd*, cited above, § 43; and *Financial Times Ltd and Others*, cited above, § 61).

41. The Court, like the applicants, is satisfied that the interferences were prescribed by law and that they pursued a legitimate aim, namely maintaining the authority and impartiality of the judiciary. It must therefore examine whether the interferences were "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

42. The Commission has previously considered the compatibility of a finding of contempt under section 8 of the 1981 Act with Article 10 of the Convention (see *Associated Newspapers Limited, Steven and Wolman v. the United Kingdom*, no. 24770/94, Commission decision of 30 November

1994, unreported). In its decision, it noted that the "absolute" nature of the offence established by section 8 had to be considered in the context of the State's margin of appreciation in setting up its legislation and its reasons for enacting the legislative provisions at issue. It observed that the jury system in the United Kingdom was founded on the premise that jurors would express themselves freely in the jury room in the knowledge that what they said would not be used outside, and accepted that the knowledge that their comments might later be made public could influence the manner in which members of the jury chose to express themselves. It therefore concluded that the unlimited prohibition on disclosure was an inevitable protection for jurors and could be regarded as "necessary" in a democratic society which had decided to retain this particular form of jury trial.

43. For the Court, rules imposing requirements of confidentiality as regards judicial deliberations play an important role in maintaining the authority and impartiality of the judiciary, by promoting free and frank discussion by those who are required to decide the issues which arise. In the case of judges, such rules also contribute to the guarantee of judicial independence, a core requirement of all Contracting States' legal systems, by ensuring that each member of the bench may decide a case in full confidence that his or her vote will not be made public, except in so far as dissenting opinions are possible in the legal system concerned.

44. As to lay jurors, who are often obliged by law to undertake jury service as part of their civic duties, it is essential that they be free to air their views and opinions on all aspects of the case and the evidence before them, without censoring themselves for fear of their general views or specific comments being disclosed to, and criticised in, the press. In this regard the Court recalls that in its judgment in the case of *Gregory v. the United Kingdom*, 25 February 1997, § 44 *Reports of Judgments and Decisions* 1997-I, it acknowledged that the rule governing the secrecy of jury deliberations was a crucial and legitimate feature of English trial law which served to reinforce the jury's role as the ultimate arbiter of fact and to guarantee open and frank deliberations among jurors on the evidence which they had heard. It considers that the nature of this imperative is such that an absolute rule cannot be viewed as being unreasonable or disproportionate, given that any qualification or exception would necessarily lead to an element of doubt which could undermine the very objective which the legislation seeks to secure.

45. As to the application of the rule to the specific facts of the case, the Court observes that it is not called upon in the present case to assess the compatibility with Article 10 of section 8 in circumstances involving a conviction for research into jury methods. Nor is the Court concerned with a case where the interests of justice could be said to require the disclosure of the jury's deliberations: the applicants themselves argued that the disclosures did not seek to challenge or undermine the verdict in the

particular case in question but to contribute to the serious debate concerning the use of expert medical evidence in criminal trials. The question in the present case is whether the disclosures offended against the secrecy of the jury deliberations such that the penalties imposed were justified under Article 10 § 2 of the Convention. In this regard, the Court observes, as noted by Pill LJ, that the disclosure of the 10-2 vote revealed the opinions expressed by ten members of the jury at an early stage of a long deliberation, and the reference to "no going back" indicated their firm intention not to change their minds. The reference to "despicable enemy of correct and logical thinking" revealed the first applicant's assessment of the opinions of and statements expressed by the majority members, and constituted an accusation of incorrect and illogical thinking against them. The phrase "wonderfully persuasive device, common sense" disclosed their approach to the evidence, and in particular that they relied on common sense and not correct and logical thinking. The Court is accordingly satisfied that all of these disclosures offended against the secrecy of the deliberations of the jury.

46. The Court further notes that only two phrases in the published articles were found to be in breach of section 8 of the 1981 Act. Most of the content of the articles was not challenged by the Attorney General. Indeed, in the proceedings before the Divisional Court, counsel for the Attorney General accepted that there would be no breach of section 8 where a juror expressed general views about the merits or demerits of the jury system or about jurors relying on expert evidence. As regards two of the four phrases challenged, the Divisional Court found that they were compatible with the provisions of the 1981 Act. The Court is therefore satisfied that the applicants were not precluded from contributing to the debate on the use of expert medical evidence in trials at the relevant time.

47. The Court acknowledges that the fines imposed and the costs awarded as regards the second applicant were not insignificant. However, it does not consider them to be disproportionate in all the circumstances of the case, having regard to the revenues of the second applicant and the need to ensure that the sanctions imposed for a breach of section 8 have a deterrent effect.

48. The Court accepts that the applicants did not intend to violate section 8 of the 1981 Act and believed that they had not done so. However, the fact remains that the disclosures made by the first applicant and published by the second applicant were found by the domestic courts to have revealed the jury's opinions and views and details of votes cast by them during the early stages of the deliberations. That finding and the sanctions imposed as a consequence were neither arbitrary nor unreasonable. In the circumstances, the finding of contempt of court, the imposition of the fines on the applicants and the award of costs against the second applicant were proportionate to the legitimate aim of maintaining the authority and

impartiality of the judiciary. The Divisional Court judgment was therefore necessary within the meaning of Article 10 § 2 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President