



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

FOURTH SECTION

CASE OF RYBACKI v. POLAND

(Application no. 52479/99)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Rybacki v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 52479/99) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Andrzej Rybacki (“the applicant”), on 31 December 1998.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention. He also complained under Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention that for a certain period during the investigation he had been unable to communicate with his defence counsel out of earshot of a person appointed by the prosecutor.

4. On 9 November 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of criminal proceedings, the length of detention, the alleged unfairness of the criminal proceedings and the refusal of access to the full statements made by anonymous witnesses. On 9 October 2007 the Court declared admissible the applicant’s complaints relating to the excessive length of his detention and the lack of unsupervised contacts with his lawyer at the investigation stage of the proceedings, and the remainder of the application inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Detention on remand

5. The applicant was arrested on 8 May 1996 on suspicion of having committed an aggravated robbery while acting as a member of an organised criminal gang. On 9 May 1996 the District Prosecutor issued a detention order against him on charges of aggravated robbery involving use of a firearm and committed in conspiracy with other persons. The prosecutor referred to a reasonable suspicion, based on witnesses' testimony, and the risk that the applicant might go into hiding or exert pressure on witnesses. Detention was imposed until 8 August 1996.

6. The applicant was detained on the same date as two other accused persons. Yet another suspect was detained on 23 August 1996. The investigation and subsequent court proceedings were conducted against five persons jointly, four of them detained and one at liberty.

7. On 10 May 1996 the applicant's defence counsel appealed against the detention order. He challenged the credibility of the evidence in the applicant's case, stating that it had been obtained illegally. In particular, he argued that the manner in which the applicant had been presented in an identification parade had not complied with the applicable procedural guarantees. This application was dismissed on 13 May 1996.

8. In the course of the investigation, the applicant's detention was prolonged twice, on 1 August, until 31 October 1996, and on 24 October, until 31 December 1996. The courts relied on a reasonable suspicion that the applicant had actually committed the offence with which he was charged and on the need to ensure the proper conduct of the investigation. They further referred to the need to obtain experts' reports on certain items of material evidence. In its decision of 24 October 1996, the court observed that the seriousness of the charges against the applicant substantiated an actual risk that he might "undertake dishonest actions aimed at obstructing the investigation". It further pointed out the need for additional expertise, in particular with regard to fingerprints and mechanoscopy. An appeal lodged by the applicant against the decision of 1 August 1996 was unsuccessful.

9. On an unspecified date in November or December 1996 the investigation was completed. On 23 December 1996 the prosecutor filed a bill of indictment against the applicant and his co-accused with the Wrocław Regional Court. The bill of indictment listed thirty-nine witnesses to be questioned and one hundred and thirty-seven pieces of documentary evidence to be read out during the trial.

10. The first hearing in the case was held on 21 March 1997. A further hearing was held on 29 April 1997. The hearing fixed for 17 June 1997 was adjourned as one of the accused had been hospitalised.

11. On 7 August 1997 the Wrocław Regional Court dismissed an application for the applicant's release, referring to a persistent reasonable suspicion that he had committed the offence. It further pointed out that the severe penalty that could be imposed on him justified the fear that he might go into hiding or otherwise obstruct the proceedings.

12. The court held subsequent hearings on 11 and 12 September and 18 November 1997, and 10 February and 3 March 1998. During a hearing held on 3 March 1998 the court heard evidence from two anonymous witnesses who answered questions which had previously been formulated in writing by the applicant's lawyers. On 25 March 1998 they submitted to the court a list of further questions to be put to one of those witnesses. At a hearing held on 1 April 1998 the court questioned that witness again.

13. On 16 April 1998 the Wrocław Regional Court requested the Supreme Court to prolong the applicant's detention, which was about to exceed two years. The court, when motivating the request, submitted that:

"The evidence collected against the accused - in particular the testimony of anonymous witnesses - substantiated the suspicion that the applicant had committed the crime of aggravated robbery which as such [the crime] represented an extremely high danger to society. The proceedings before the first-instance court were at their final stage and - unless any unpredictable circumstances arose - would soon be completed. The Regional Court had already heard all witnesses for the prosecution and most of the defence witnesses (...). The Regional Court was still waiting for additional expert reports and data from the mobile telephone operator, requested by the defence (...). It should also be underlined that one of the accused persons deliberately contributed to the prolonging of the proceedings by consuming a poisonous substance."

14. On 24 April 1998 the applicant's lawyer filed pleadings in which he commented on the court's request to authorise the further detention. He challenged the credibility of the evidence against the applicant, pointed out the numerous shortcomings in the process of taking evidence and disputed the finding that the accused persons had substantially contributed to the length of the proceedings. He stated that the proceedings were lengthy because of the long intervals between the hearings.

15. On 15 May 1998 the Supreme Court extended the applicant's detention until 31 October 1998. It found that apart from the reasonable suspicion that he and the two co-accused persons had committed the offence at issue, there existed an actual risk that they would obstruct the proceedings if released. The assumption of that risk was based on the severity of the potential sentence, and the fact that not all witnesses had yet been heard by the court and that other defendants had indeed attempted to contact witnesses who appeared at the trial in order to intimidate them. Thus, only

the applicant's continued detention could guarantee the proper conduct of the proceedings.

Nevertheless, the Supreme Court also recommended that the trial court should "schedule the hearings in a more rational way so as to avoid further intervals of several months in the instant case".

16. Subsequent hearings were held on 9 July, 16 September, 1 October and 3 November 1998.

17. On 1 October 1998 the Wrocław Regional Court again requested the Supreme Court to extend the detention, relying on the fact that at that time it was still waiting for additional data from the mobile telephone operator to be submitted in evidence. On 13 October 1998 the Supreme Court extended the applicant's detention until 30 November 1998. It found that the trial court had "effectively used the time since the previous extension of the detention by the Supreme Court in this particularly complex case".

18. Upon another request from the trial court, on 17 November 1998, the Supreme Court again extended the detention, until 31 December 1998. It observed that the additional evidence had not yet been obtained "for reasons beyond the trial court's control" and that the other premises for detention remained valid.

19. The next hearing was held on 7 December 1998. Following a further request from the trial court, on 30 December 1998 the Supreme Court again extended the detention, until 28 February 1999, referring this time to "considerable obstacles which arose in the taking of evidence, namely the need to examine contradictory data obtained from the mobile telephone operator".

20. Subsequent hearings were held on 29 January and 16 February 1999. On the latter date the Wrocław Regional Court closed the trial and rendered its judgment. It found the applicant and his co-accused guilty of robbery committed by an organised criminal gang. The applicant was sentenced to seven years' imprisonment and a fine.

21. On 28 June 1999 the applicant's lawyers filed an appeal. They referred, *inter alia*, to procedural shortcomings and expressed the view that the proceedings had, as a whole, been unfair. On 27 October 1999 the Wrocław Court of Appeal upheld the first-instance judgment. On 4 January 2000 the applicant's lawyer lodged an appeal on points of law with the Supreme Court. On 16 November 2001 that court dismissed the appeal as manifestly unsubstantiated.

B. The applicant's contacts with his defence counsel

22. On 9 May 1996, a day after the applicant was arrested, his wife retained a lawyer to represent him.

23. In the first week following his arrest, the applicant had unrestricted access to his lawyer. On 9 May 1996 the lawyer was present when the

applicant was questioned by the prosecutor. He also submitted applications for evidence to be taken and to put certain questions to the applicant.

24. On 17 May 1996 the prosecutor issued a decision whereby he reserved the right to be present whenever the applicant saw his defence counsel, referring to Article 64 of the Code of Criminal Procedure. The applicant's lawyer complained that such a restriction impaired the applicant's defence rights and made it impossible for the defence to agree upon a defence strategy. He requested that the decision be quashed. On 4 June 1996 his request was refused.

25. On 12 June 1996 the prosecutor gave a new order that the applicant's contacts with his lawyer were to be supervised.

26. On 24 June 1996 the lawyer renewed his request to see the applicant without any supervision.

27. On 4 July 1996 his request was refused. The applicant's lawyer appealed. This appeal was dismissed by the Wrocław Regional Court on 15 July 1996. The court noted that the applicant could at that time see his lawyer whenever he requested. The restrictions imposed on his contacts with his lawyer did not impair his defence rights. The only restriction imposed on the applicant concerned the possibility of having unsupervised contacts with his lawyers. The fact that a prosecutor was to be present during these visits did not affect the applicant's defence rights at that stage, the more so as the restriction was to apply only during the investigations. The court further stated that the defence strategy could also be discussed in accordance with the law in the presence of a person appointed by the prosecutor.

28. On 4 November 1996 the applicant's lawyers requested permission to see the applicant without other persons being present. On 7 November 1996 their request was granted.

II. RELEVANT LAW AND PRACTICE

A. Domestic law

29. The relevant domestic law and practice concerning pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other so-called "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

30. As regards contacts between defendant and counsel during the investigative stage of the proceedings, under Article 64 of the 1969 Code of Criminal Procedure, applicable at the relevant time, a defendant remanded

in custody was entitled to communicate with his or her counsel in the absence of any other persons, and to send and receive correspondence to and from counsel, unless the prosecutor reserved the right to be present whenever the applicant saw his defence counsel. Such a decision of the prosecutor could be appealed against to a court. No further appeal lay against a court decision given in this respect.

B. Relevant international materials

31. Rule 93 of the Standard Minimum Rules for the Treatment of Prisoners (Resolution (73)5 of the Committee of Ministers of the Council of Europe) provides: “An untried prisoner shall be entitled, as soon as he is imprisoned, to choose his legal representation ... and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him and to receive, confidential instructions. At his request, he shall be given all necessary facilities for this purpose. ... Interviews between the prisoner and his legal adviser may be within sight but not within hearing, either direct or indirect, of a police or institution official.”

32. The recommendation of the Committee of Ministers to Member States of the Council of Europe on the European Prison Rules (Rec (2006)2), adopted on 11 January 2006, in so far as relevant, reads as follows:

“Legal advice

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

...

23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

33. The applicant complained that the length of his pre-trial detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

34. The Government contested that allegation.

A. Admissibility

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

36. The applicant's detention started on 8 May 1996, when he was arrested. On 16 February 1999 the first-instance court convicted him of aggravated robbery.

37. Accordingly, the period to be taken into consideration amounts to two years and nine months.

2. The parties' submissions

38. The Government maintained that the applicant's detention complied with the requirements of Article 5 § 3 of the Convention. The applicant disagreed.

3. The Court's assessment

(a) General principles

39. The Court notes that the general principles regarding the right to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-...; and *Bąk v. Poland*, no. 7870/04, §§ 51-53, ECHR 2007-... (extracts), with further references).

(b) Application of the above principles in the present case

40. The Court observes that the present case concerned a serious crime, namely robberies and theft committed with violence by a criminal gang. Thus it was a classic example of organised crime, by definition presenting more difficulties for the investigation authorities and, later, for the courts in

determining the facts and the degree of responsibility of each member of the group. It is obvious that in cases of this kind continuous control and limitation of the defendants' contact with each other and with other persons may be essential to avoid their absconding, tampering with evidence and, most importantly of all, influencing, or even threatening, witnesses. Accordingly, longer periods of detention than in other cases may be reasonable.

41. In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk*, cited above, § 57).

42. In their decisions to extend the applicant's detention, in addition to the reasonable suspicion against the applicant the authorities relied principally on the severity of the penalty to which he was liable, the need to secure the proper conduct of the proceedings and the need to secure further evidence.

43. The Court accepts that the reasonable suspicion that the applicant had committed a serious offence could initially warrant his detention. Also, the need to obtain voluminous evidence and to secure the proper conduct of the proceedings, in particular the process of obtaining expert opinions, constituted valid grounds for the applicant's initial detention.

44. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts – for example, the risk that the applicant would tamper with evidence – were “relevant” and “sufficient” (see, *Kudla* cited above, § 111).

45. As regards the risk of tampering with the evidence, the Court notes that the Supreme Court, in its decision of 15 May 1996, had regard to the fact that other defendants had attempted to contact witnesses who testified against them (see paragraph 15 above). Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high.

Otherwise, the courts relied heavily and repeatedly on the likelihood of a severe sentence being imposed on the applicant. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

46. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention.

47. Although the above finding would normally absolve the Court from assessing whether the proceedings were conducted with special diligence (see *Mc Kay*, cited above, § 44), the Court notes that in the present case the investigation was completed speedily as the bill of indictment was lodged with the Wrocław Regional Court in December 1996. However, during the trial the dates for hearings were set at lengthy intervals and the Supreme Court, in its decision of 15 May 1998, criticised the court for this shortcoming. It further notes that in their decisions the courts repeatedly relied on the difficulties which the courts had encountered in taking evidence. It notes in this connection that it is for the courts to organise the taking of evidence in an expeditious manner.

48. In the circumstances, the Court also finds that the authorities failed to act with all due diligence in handling the applicant's case.

49. Having regard to the foregoing, the Court accordingly concludes that there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

50. The applicant further complained that for over five months of his detention he could not communicate with his lawyer out of earshot of the prosecutor or a person appointed by him. He relied on Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention. These provisions read, insofar as relevant:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

A. The parties' submissions

51. The Government submitted that the applicant had been represented by a privately hired lawyer already on 9 May 1996 when he was questioned by the prosecutor. The lawyer had been present during the questioning, put questions to the applicant and submitted requests for evidence to be taken. It was also on that date that the detention order had been issued against the applicant. On 10 May 1996 the lawyer had appealed against it. Between 9 and 17 May the applicant's contacts with the lawyer had not been

restricted in any way. Hence, throughout that period the applicant had had good access to legal assistance, while his defence counsel had been able to take any measures he thought advisable in order to ensure the applicant's defence and to instruct him properly.

The Government did not contest the fact that the restrictions imposed by the prosecution, by the decision of 17 May 1996, on contacts between the applicant and his lawyers had limited the exercise of his defence rights. However, they were of the view that this shortcoming had been fully counterbalanced by the subsequent course of the judicial proceedings, given that at that stage the applicant was able to communicate freely with his lawyers. Moreover, the restriction did not take the form of a blanket order that all contacts between the applicant and his counsel should be supervised. Instead, before 7 November 1996 when the lawyer had requested authorisation to meet the applicant, the prosecutor had taken a new decision to the effect that his contact with the lawyer should be supervised.

Lastly, the Government argued that in order to determine whether the aim of Article 6 – a fair trial – had been achieved, regard had to be had to the entirety of the domestic proceedings conducted in the case (*Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, § 38).

52. The applicant disagreed with the arguments advanced by the Government. He submitted that during the supervised visits of his lawyer, whenever they had started to talk about the case the police officer present in the same room had interrupted their conversation and warned them that if they continued the visit would have to be stopped.

B. The Court's assessment

53. The Court first notes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings as set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 755, § 52;).

54. The Court further reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of fair trial (*Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A, and *Demebukov v. Bulgaria*, no. 68020/01, § 50, 28 February 2008). While it confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance ...", Article 6 paragraph 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the

requirements of a fair trial (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275).

55. The Court reiterates that, even if the primary purpose of Article 6, as far as criminal matters are concerned, is to ensure a fair trial by a “tribunal” competent to determine “any criminal charge”, it does not follow that this provision of the Convention has no application to pre-trial proceedings. Thus, Article 6 - especially paragraph 3 - may be relevant before a case is sent for trial, at the preliminary investigation stage, if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions. The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case seen as a whole (see *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports* 1996-I, § 62; and *Brennan v. the United Kingdom*, no. 39846/98, § 45, ECHR 2001-X).

56. The right of the defendant to communicate with his advocate out of hearing of a third person is part of the basic requirements of a fair trial in a democratic society and follows from Article 6 § 3 (c). This right, which is not explicitly set out in the Convention, may be subject to certain restrictions (see *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports* 1996-I, pp. 54-55, § 63). However, if a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its effectiveness whereas the Convention is intended to guarantee rights that are practical and effective (see *S. v. Switzerland*, 28 November 1991, § 48, Series A no. 220; *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, § 33). The importance to the rights of the defence of ensuring confidentiality in meetings between the accused and his lawyers has been affirmed in various international instruments, including European instruments (see *Brennan v. the United Kingdom*, cited above, o. 39846/98, §§ 38-40, ECHR 2001-X; *Öcalan v. Turkey* ([GC], no. 46221/99, ECHR 2005-IV, § 132-133). This privilege encourages open and honest communication between clients and lawyers as an important safeguard of one’s right to defence (see, *Oferta Plus SRL v. Moldova*, no. 14385/04, § 145, 19 December 2006).

57. In the present case the applicant was represented by his lawyer who was appointed on 9 May 1996, a day after the applicant’s arrest. When the applicant was questioned by the prosecutor on that date, the lawyer was present. He participated in the interview, put questions and made requests for evidence to be taken (compare and contrast, also, *Brennan* cited above, § 82). Hence, for a short period at the beginning of the proceedings the applicant had benefited from unfettered contacts with his legal representation.

58. However, on 17 May 1996 the prosecutor reserved the right to be present whenever the applicant saw his defence counsel. The Court notes in this connection that in that order the prosecutor merely referred to the provisions of Article 64 of the Code of Criminal Procedure, which expressly allowed for such restrictions to be imposed (see paragraph 24 above). The Court can accept that the general purpose of this provision was to prevent the hampering of police investigations by accused in special circumstances. However, in the present case no reference was made to the grounds on which this decision was given, even of a general nature, such as, for example, the need to secure the proper conduct of the investigation. Nor were concrete reasons adduced to show that such supervision was, in the circumstances of the case, necessary and justified.

59. In particular, the Court observes that it was not shown or argued, either by the domestic authorities or by the Government in the proceedings before the Court, that when imposing the measures the prosecuting authorities considered that there were any indications pointing to a risk of collusion arising out of the lawyer's contacts with the applicant. Neither the professional ethics of the lawyer nor the lawfulness of his conduct were at any time called into question (*S. v. Switzerland*, cited above, § 49). The Court can only conclude that it has not been shown that there were sufficient grounds for the imposition of the measures complained of.

60. The Court further notes that as a result of the order of 17 May 1996 the applicant's contacts with his lawyer were, from that date until 7 November 1996, supervised by police officers present at their meetings. Not only were they present in the same room, but they also listened to the conversations between the applicant and the lawyer. The Court notes the applicant's contention that during the supervised visits of his lawyer, whenever they started to talk about the case a police officer interrupted their conversation and warned them that if they continued the visit would have to be stopped (see paragraph 50 above). The Government have not countered this contention. Hence it cannot be said that the applicant's contacts with his lawyer were, in such a setting, capable of assisting him in the effective exercise of his defence rights.

61. Lastly, the Court notes that it has not been argued that the fairness of the proceedings was vitiated by reason of the prosecution's reliance on, for example, incriminating statements made by the applicants in the period between May and November, namely when the applicant could not benefit from unsupervised legal advice. However, the Court cannot but observe that the restrictions concerned were applied for over six months during the investigation which lasted, overall, seven months and two weeks (see in this connection *S. v. Switzerland*, cited above, § 49). The Court further notes that throughout this period the prosecution authorities gathered very voluminous evidence (see paragraph 9 above). The fact that the authorities were actively preparing the bill of indictment against the applicant taken together with the

considerable length of that period cannot but strengthen the conclusion that the absence of unhindered contacts with his lawyer throughout that period negatively affected the effective exercise of his defence rights.

62. Having regard to the circumstances of the case seen as a whole, the Court is therefore of the view that there has been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

64. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds* that there has been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President