



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

SECOND SECTION

**CASE OF TAXQUET v. BELGIUM**

*(Application no. 926/05)*

JUDGMENT

STRASBOURG

13 January 2009

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER  
WHICH DELIVERED JUDGMENT IN THE CASE ON  
16/11/2010**

*This judgment may be subject to editorial revision.*



**In the case of Taxquet v. Belgium,**

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

Ireneu Cabral Barreto, *President*,

Françoise Tulkens,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *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. 926/05) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Belgian national, Mr Richard Taxquet (“the applicant”), on 14 December 2004.

2. The applicant was represented by Mr L. Misson and Mr J. Pierre, lawyers practising in Liège. The Belgian Government (“the Government”) were represented by their Agent, Mr D. Flore, Director-General, Federal Justice Department.

3. The applicant alleged, in particular, a violation of Article 6 §§ 1 and 3 (d) of the Convention, on account of the lack of reasoning in a judgment of the Assize Court, the impossibility of examining or having examined an anonymous witness and the Assize Court's refusal to hear or rehear evidence from certain witnesses.

4. On 10 December 2007 the Court decided to give notice of the above-mentioned complaints to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Angleur.

6. On 17 October 2003 the applicant appeared before the Liège Assize Court, together with seven co-defendants, on charges of murdering a government minister, A.C., and attempting to murder the minister's partner, M-H.J., on 18 July 1991. The indictment stated that they were accused of the following:

“1. having knowingly and intentionally killed [A.C.], with the additional circumstance that the killing was premeditated; this offence is classified by law as premeditated murder (*assassinat*);

2. having attempted, knowingly, intentionally and with premeditation, to kill [M-H.J.], the intention to commit the offence having been manifested by conduct which objectively constituted the first step towards perpetration of the offence and which was halted or failed to attain the aim pursued only as a result of circumstances outside the control of its perpetrators; this offence is classified by law as attempted premeditated murder.”

7. The indictment further noted on pages 11 to 12:

“Carlo T. accuses Richard Taxquet, P.D.M. and A.V.D.B. of having ordered the murder of A.C. ...

In April 1991 Richard Taxquet informed him about an altercation he had had with A.C., who, having evidently found out about certain matters, had told Richard Taxquet 'that he would get it'.

Richard Taxquet also confided in his uncle that someone had issued a death threat against him, adding: 'it will be him or me'.”

8. In June 1996 a person described by the applicant as an anonymous witness had passed on certain information to the investigators. A record of 3 September 1996 mentioned the informer's intention to remain anonymous, which he justified by fears for his safety “in view of the importance of his information and the media outcry that has always surrounded the C. case”. The person was never interviewed by the investigating judge. He had given the investigators information obtained in confidence from a person whose identity he refused to disclose. During the trial in the Assize Court, the investigators were asked on the initiative of several defendants about the informer's identity. They stated that their informer was not one of the defendants and had not personally witnessed the alleged offences. According to the information supplied, which was set out in fifteen points, A.C.'s murder had been planned by six people, including the applicant and a leading political figure. The only point incriminating the applicant stated:

“V.der B. and Taxquet apparently laid particular emphasis on the urgent need to kill C. before the '91 holidays as he had promised to make some significant disclosures after the summer break.”

9. On 7 January 2004 the Assize Court sentenced the applicant (and his co-defendants) to twenty years' imprisonment.

10. The jury had been asked to answer thirty-one questions from the President of the Assize Court. Four of them concerned the applicant and were worded as follows:

**“Question 25 – PRINCIPAL COUNT**

**Is the accused Richard Taxquet, who is present before this court, guilty,**

**as principal or joint principal,**

– either through having perpetrated the offence or having directly cooperated in its perpetration,

– or through having, by any act whatsoever, lent such assistance to its perpetration that without it the offence could not have been committed,

– or through having, by gifts, promises, threats, abuse of authority or power, scheming or contrivance, directly incited another to commit the offence,

– or through having, by means of speeches in a public place or assembly, or by means of any written or printed matter, image or emblem displayed, distributed or sold, offered for sale or exhibited in a place where it could be seen by the public, directly incited another to commit the offence,

**of having knowingly and intentionally killed [A.C.] in Liège on 18 July 1991?**

ANSWER: yes

**Question 26 – AGGRAVATING CIRCUMSTANCE**

**Was the intentional homicide referred to in the previous question premeditated?**

ANSWER: yes

**Question 27 – PRINCIPAL COUNT**

**Is the accused Richard Taxquet, who is present before this court, guilty,**

**as principal or joint principal,**

...

**of having attempted knowingly and intentionally to kill [M.-H.J.] in Liège on 18 July 1991, the intention to commit the offence having been manifested by conduct which objectively constituted the first step towards perpetration of the**

**offence and which was halted or failed to attain the aim pursued only as a result of circumstances outside the control of its perpetrator?**

ANSWER: yes

**Question 28 – AGGRAVATING CIRCUMSTANCE**

**Was the attempted intentional homicide referred to in the previous question premeditated?**

ANSWER: yes”

11. On account of the numerous events occurring in the course of the trial, the Assize Court delivered thirteen interlocutory judgments:

(1) judgment of 17 October 2003 noting the absence of certain defendants and directing that they were to be tried *in absentia*;

(2) judgment of 20 October on the submissions of a co-defendant on the issue of cassette recordings of a video link;

(3) judgment of 27 October 2003 concerning the examination of witnesses without one of the co-defendants being present;

(4) judgment of 18 December 2003 on the civil parties' submissions as to the examination of certain witnesses;

(5) judgment of 3 November 2003 on the examination of a witness in camera;

(6) judgment of 6 November 2003 setting aside the order for a co-defendant to be tried *in absentia*;

(7) judgment of 13 November 2003 refusing a request by the prosecution for a hearing in camera;

(8) judgment of 19 November 2003 on the examination of certain witnesses in camera;

(9) judgment of 18 December 2003 on the submissions of a co-defendant objecting to the showing of a recording made by video link;

(10) judgment of 18 December 2003 on the submissions of a co-defendant as to the issue of witnesses who had failed to appear and witnesses to be reheard;

(11) judgment of 18 December 2003 on the submissions of a co-defendant as to the issue of the anonymous witness;

(12) judgment of 18 December 2003 on the applicant's submissions as to the issue of the anonymous informer;

(13) judgment of 18 December 2003 on the applicant's submissions as to the issue of witnesses who had failed to appear and witnesses to be reheard.

12. With regard to the request for an investigating judge to hear or rehear evidence from the person who had anonymously supplied information noted down by two non-commissioned gendarmerie officers, the Assize Court held:

“This information, obtained anonymously by members of the police force, has no probative value as such. In the present case it simply constituted information capable of giving fresh impetus or a new slant to the investigation and leading to the independent gathering of lawful evidence.

When examined at the hearing as witnesses, [the two non-commissioned gendarmerie officers] stated that their informer was not one of the defendants and that he himself had not witnessed any of the acts he described; he had merely relayed information he said he had received in confidence from a person whose identity he refused to disclose.

...

In the investigators' view, the process of drawing up an official record of information given to them by an anonymous informer did not in itself constitute any infringement of the defence rights of the persons named by the informer. All that was involved at that stage was the disclosure, with a view to its analysis and verification, of information that might be of interest to the investigation and might assist in clarifying the facts. Viewed in isolation from any objective data that might subsequently confirm it, this information did not constitute evidence of the acts allegedly carried out by the persons whose identity was mentioned by the informer.

...

Lastly ... it is not possible to speak of rehearing when it does not appear from the case file or the oral proceedings that [the person described as an anonymous witness] gave evidence under oath to an investigating judge.

With regard to the request for cross-examination of that person, firstly, the court is unaware of his identity and, secondly, regardless of the grounds relied on by the investigating judicial authorities in that respect, it does not appear useful for establishing the truth and would delay the proceedings needlessly without giving the hope of more certain results.”

13. In another interlocutory judgment delivered the same day, the Assize Court held as follows in relation to the applicant's request for a second examination of certain witnesses:

“The witnesses S.N., J.M., L.L. and A.R. gave evidence to the Assize Court, and the defendant Richard Taxquet and his counsel had the opportunity to put to them any questions they wished and to challenge freely all the evidence adduced by the prosecution and the civil parties.

In any event, as matters stand a second examination of those witnesses is unlikely to assist in establishing the truth and would tend to prolong the proceedings needlessly without giving cause to hope for more certain results.

...

Lastly, the requested examination of the witness E.G., who was called but refused to appear, and of a new witness, F.R., are likewise not necessary for establishing the truth and would tend to prolong the proceedings needlessly without giving cause to

hope for more certain results, since the jury already has all the information required to form its verdict.”

14. The applicant appealed on points of law against his conviction of 7 January 2004 by the Assize Court and against all the interlocutory judgments given by that court.

15. In a judgment of 16 June 2004 the Court of Cassation dismissed the appeal. It held, in particular, that:

- the belated appearance of a co-defendant could not infringe the appellants' defence rights as they had been able to challenge freely both the statements made by that defendant during the preliminary investigation and relayed at the hearing by the persons to whom they had been given, and the statements made directly by the defendant before the jury.

- the Assize Court had rightly ordered that two witnesses should be examined in camera, fearing that they might not be able to express themselves freely if the hearing were public, which would have hindered the proper administration of justice;

- in refusing to show the film of the confrontation between witnesses on the ground that it might delay the proceedings needlessly, the Assize Court had not breached the principle of respect for the rights of the defence or the principle that hearings must be conducted orally, since the refusal had been based on the fact that those taking part in the confrontation, having appeared at the hearing, had been afforded the opportunity to be brought directly face to face with the defendants;

- in directing that the proceedings should continue on the ground that the examination of certain absent witnesses (who had been duly summoned to appear in court) was not necessary for establishing the truth, and in holding that a further appearance by certain other witnesses “would tend to prolong the proceedings needlessly without giving cause to hope for more certain results”, the Assize Court had not breached Article 6 of the Convention and the principle that hearings must be conducted orally;

- since the presumption of innocence related above all to the attitude of judges called upon to determine a criminal charge, the comments made by an investigator and the press reports, even if inaccurate, malevolent or resulting from a criminal offence, could not in themselves cause the trial to breach Article 6 §§ 1 and 2 of the Convention;

- it could not be inferred from the alleged inexperience of the jurors, the speed with which they deliberated or the lack of reasons given for their verdict that they were incapable of impartial adjudication in a case that had attracted considerable press coverage;

- the procedure for appointing members of the jury and the fact that they reached their verdict as to guilt without having discussed the issue with the court did not mean that the Assize Court was not an independent and impartial tribunal established by law within the meaning of Article 6 § 1 of

the Convention or that the presumption of the accused's innocence could not be lawfully rebutted in that court;

- neither Article 6 nor Article 13 of the Convention guaranteed the right of appeal;

- neither Article 6 §§ 1 and 3 (b) of the Convention nor Article 14 § 3 (b) of the International Covenant on Civil and Political Rights, nor Article 149 of the Constitution, even when read in conjunction with the above-mentioned treaty provisions, placed any obligation on a jury to state reasons for its answers;

- the ground of appeal relating to Article 6 § 3 (b) of the Convention (inability to confer freely with his lawyer as a result of his detention the day before the trial had begun) was inadmissible as it did not appear from the evidence in the file that the applicant had alleged before the Assize Court that there had been a violation of the right to have adequate facilities for the preparation of his defence;

- Articles 10 and 11 of the Constitution, Article 14 of the International Covenant on Civil and Political Rights and Article 6 § 1 of the Convention did not state that reasons had to be given for a guilty verdict, or lay down the right of appeal or the right to appear before courts made up solely of career judges; the discretion of the lay jury, which, moreover, was restricted by Articles 351, 352, 364 and 364 *bis* of the Code of Criminal Procedure, did not give rise to an arbitrary difference in treatment for the purposes of Article 14 of the Convention.

16. As to the argument that the appellants' conviction had been decisively or incidentally based on the statements of an anonymous informer, the Court of Cassation stated:

“In so far as they challenge the observation that the Assize Court was unaware of the identity of the person whose examination was being requested and could therefore not order it, these grounds of appeal, being directed against an *obiter dictum*, are immaterial.

On that account, they are inadmissible.

As to the other submissions, the presence in a criminal case file of a record containing information from an unidentified source does not require the trial court to ensure that the informer is identified and examined in accordance with the procedure set forth in Articles 189 *bis* and 315 *bis* of the Code of Criminal Procedure in order for the prosecution to be valid or admissible; those provisions leave it open to the trial court to appoint an investigating judge to that end if such a step appears useful for establishing the truth.

The judgments consider, on the basis of a factual assessment which this court is not empowered to overrule, that the examination requested would delay the proceedings needlessly without giving cause to hope for more certain results.

The judgments also observe that the information obtained anonymously did not correspond to the evidence obtained lawfully and independently against the defendants.

It does not appear from the Assize Court's reply to the appellants' submissions that the trial courts contested their right to rebut the evidence produced at the trial.

On that account, these grounds of appeal cannot be allowed.

As to the remaining grounds, a breach of Article 6 § 3 (d) of the Convention ... does not result from the mere fact that the trial court considered it unnecessary, or impossible, to order the cross-examination of the anonymous informer whose disclosures provided helpful guidance for the investigation.

On that account, these grounds of appeal have no basis in law.”

17. Addressing a further ground of appeal, the Court of Cassation noted:

“The appellant [another co-defendant] submitted that before the start of the trial, the President of the Assize Court, acting by virtue of the powers conferred on him by Article 298 of the Code of Criminal Procedure, had 'called a series of witnesses who, according to the criminal file, had been connected with with the matter of the anonymous witness'; the appellant observed that the session had, however, opened without those persons being examined and concluded that his trial had therefore not been fair within the meaning of Article 6 of the Convention ...

However, the investigative measures described by the appellant could also have been ordered after the start of the trial, even under a different procedure, by the President of the Assize Court acting by virtue of his discretionary power.

It does not appear from the evidence in the file that the appellant requested the President of the Assize Court to order the examinations that, according to the ground of appeal, were not carried out.

Since this ground of appeal cannot be raised for the first time before this court, it is inadmissible.”

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Relevant provisions of the Judicial Code on Assize Court proceedings

18. The Assize Court includes a President and two other judges (*assesseurs*); it sits with a jury. For the investigation and trial of civil actions, the court sits without a jury (Article 119). Persons appearing on the list of jurors must be registered on the electoral roll, enjoy full civic and political rights, be aged at least thirty and less than sixty and be able to read and write (Article 217). Members of the jury are chosen by lot from the list

of persons on the electoral roll (Article 218). The procedure for compiling the list of jurors consists of several stages.

19. Article 223 provides that the mayor (*bourgmestre*) is required to carry out a survey of all the voters on the preliminary list in order to determine whether they can read and write, whether they are capable of following the proceedings in the Assize Court in the language of the region concerned, whether they are in active employment and, if so, in what capacity, whether they occupy a public office, whether they are a minister of a religion, whether they are a member of the armed forces in active service, what academic qualifications they have obtained, whether they have previously held elected office at national, provincial or municipal level, whether they are a member of one of the committees listed in point (9) of Article 223, and whether there are any impediments preventing them from carrying out the duties of a juror. Persons on the electoral roll must accurately complete the form drawn up for this purpose.

20. The prosecution is responsible for ensuring that, at least forty-eight hours before the opening of the oral proceedings, the list of jurors is served on each accused person, and the documents relating to the survey provided for in Article 223 in respect of the actual jurors and the additional jurors called for service are attached to the criminal file, where they remain until the trial jury is formed (Article 241).

21. Before the opening of the oral proceedings in each case, on the day appointed for that purpose, the jurors are called before the Assize Court in the presence of the Principal Public Prosecutor and the defendant, who is assisted by counsel (Article 242). The president of the Assize Court draws the names of the jurors one by one. First the defendant, then the Principal Public Prosecutor, may challenge an equal number of jurors. Neither the defendant nor the Principal Public Prosecutor may disclose their grounds for challenging a juror (Article 247). The jury is formed as soon as the names of twelve jurors have been drawn by lot without being challenged. The president of the court then draws the substitute jurors by lot (Article 248). The examination of the case begins immediately after the formation of the jury (Article 252).

## **B. Relevant provisions of the Code of Criminal Procedure**

22. The president addresses the members of the jury, who stand, and asks them to take the following oath: “You will swear and promise to examine with the most scrupulous attention the charges which will be made against ...; not to betray either the interests of the accused or those of society which accuses him; to communicate with no one until after your verdict; to allow no hatred, spitefulness, fear or affection to influence your judgment; to reach your decision in the light of the charges and the submissions in defence, according to your conscience and your innermost conviction, with

the impartiality and resolution which befit a free and upright person” (Article 312). Each member of the jury, called on individually by the president, raises his hand and replies “I so swear”, on pain of nullity.

23. The president may order the clerk to read out the judgment by which the defendant was committed for trial. He orders the distribution to each juror of a copy of the bill of indictment and the statement of defence, if one has been filed. The Principal Public Prosecutor reads out the indictment and the defendant or his counsel the statement of defence (Article 313).

24. A witness whose identity has been kept secret in accordance with Articles 86 *bis* and 86 *ter* cannot be summoned to appear in court as a witness without his consent. The president reads out the witness statement at the hearing and mentions that details of the witness's identity have been kept secret in accordance with Articles 86 *bis* and 86 *ter*. If the witness agrees to give evidence at the trial, he retains full anonymity. In that eventuality, the president takes the necessary steps to guarantee the witness's anonymity. The president may direct the investigating judge, either of his own motion or on an application by the prosecution or by the defendant, the civil party or their counsel, to rehear evidence from the witness or to interview a new witness in accordance with Articles 86 *bis* and 86 *ter* with a view to establishing the truth. The president may decide to be present when the witness is interviewed by the investigating judge (Article 315).

25. Following the witness's depositions, the civil party and the Principal Public Prosecutor address the court. The defendant may make submissions in reply and the civil party and the Principal Public Prosecutor are allowed to reply to the defence submissions, but the defendant always has the final word. The president then declares the oral proceedings closed (Article 335).

26. The president reminds members of the jury of the duties they will have to discharge. He then puts questions to them. The question arising from the indictment is put in these terms: “Is the defendant guilty of committing this murder, this theft or this other crime?” (Articles 336 and 337).

27. After asking the questions, the president hands them to the jury, represented by the foreman; at the same time, he hands over the bill of indictment, the reports establishing the offence and the documents in the file other than the written witness statements. He advises the jury that if the defendant is found guilty on the principal count by a simple majority, this must be mentioned at the top of their verdict. (Where appropriate, the president advises the jury that evidence obtained under Articles 86 *bis* and 86 *ter* cannot be admitted unless it is corroborated to a decisive extent by other evidence (Article 341).)

28. Once the questions have been put to and handed to the members of the jury, they retire to deliberate in private. The foreman is either the first member of the jury drawn by lot or is appointed by the jury with his

consent. Before the deliberations begin, the foreman reads out the following instruction, which is also displayed in large type in the most visible place in the deliberation room: "The law does not ask jurors to account for how they reached their personal conviction; it does not lay down rules on which they are to place particular reliance as to the completeness and sufficiency of evidence; it requires them to ask themselves questions, in silence and contemplation, and to discern, in the sincerity of their conscience, what impression has been made on their rational faculties by the evidence against the defendant and the submissions of the defence. The law does not tell them: 'You will hold every fact attested by this number of witnesses to be true'; nor does it tell them: 'You will not regard as sufficiently established any evidence that does not derive from this report, these exhibits, this number of witnesses or this many clues'; it simply asks them this one question, which encompasses the full scope of their duties: 'are you inwardly convinced?'" (Article 342).

29. The members of the jury may leave their room only when they have arrived at their verdict (Article 343).

30. If the jury finds the defendant guilty, the Principal Public Prosecutor makes submissions as to the application of the law. The defendant may file a defence; however, he can no longer dispute the facts but can merely submit that a particular act is not prohibited or defined in law as an offence, or that he does not deserve the sentence sought by the prosecution (Article 362).

31. The court, consisting of the judges and the jury, subsequently deliberates on the sentence to be imposed in accordance with the criminal law. The court then delivers its judgment (Article 366).

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

32. The Government objected that the application was inadmissible as the applicant had not lodged it in accordance with the formal requirements and within the six-month time-limit, that is, before 16 December 2004.

33. The Government pointed out that an application drawn up on the basis of the Court's application form had been signed on 16 November 2005 by the applicant himself in Lantin Prison. The application had been registered by the Court on 13 December 2005, almost a year after the expiry of the time-limit for applying to the Court. Furthermore, in a letter sent on 6 December 2005 to the registry of the Liège Court of Appeal, the applicant had stated that he had not had any contact with his lawyers for thirteen

months, in other words since 6 November 2004. The letter and the application of 16 November 2005 both suggested that “his lawyers” did not have the requisite authority to act on his behalf. Moreover, as it was not signed, the relevant document had no legal force and could not therefore constitute a valid application to the Court.

34. The Court observes, as the applicant did, that his lawyers sent a document, by fax on 16 December 2004 and by a registered letter which arrived at the Registry on 3 January 2005, on paper with the Misson law firm's letterhead, in which they stated that they were lodging an application on his behalf. The document indicated that the applicant had designated Mr Misson's law firm as his address for service. This initial document contained a statement of the facts and the alleged violations. Being the first communication, it interrupted the running of the six-month period (Rule 47 § 5 of the Rules of Court). On 16 November 2005 the applicant submitted the application form, to which was appended an unsigned copy of the initial document, which his lawyers had supplied for his information.

35. Accordingly, since the application was lodged on 14 December 2004 and the final decision was the one given by the Court of Cassation on 16 June 2004, the Court cannot find that the applicant did not comply with the requirements of Article 35 § 1 of the Convention and thus dismisses this objection.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant alleged that his right to a fair trial had not been respected in the present case, in view of the fact that his conviction by the Assize Court had not included a statement of reasons and could not be appealed against to a body competent to hear all aspects of the case. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

### A. Admissibility

37. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court notes, moreover, that that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

## B. Merits

38. The Government relied on the case of *Zarouali v. Belgium* (application no. 20664/92, Commission decision of 29 June 1994, Decisions and Reports 78) in asserting that the Belgian criminal-law system was compatible with Article 6 § 1 of the Convention. The procedural safeguards referred to in that decision compensated for the lack of more specific reasoning in a jury's guilty verdict. The Government submitted that the principles established in *Zarouali* were applicable *mutatis mutandis* in the instant case. The four questions put at the end of the oral proceedings by the President of the Assize Court had been sufficiently precise to serve as an adequate basis for the court's decision. The constituent elements of the offences, the alleged facts and the aggravating circumstances had been noted and described in detail in those questions. The applicant had not objected to the questions at any stage of the trial. Lastly, reasons had been given for the sentence imposed on the applicant and had likewise not been challenged.

39. The applicant submitted that his case could not be likened to *Papon v. France* ((dec.), no. 54210/00, ECHR 2001-XII), in so far as Mr Papon, the sole defendant at his trial, had received 768 replies to 768 questions which had also dealt with the factual circumstances of his case. The replies had provided him with an indication – in view of the intensity and precision of the approach adopted by the president of the court *vis-à-vis* the jury – of why the court had found him guilty and sentenced him. In the present case, however, it was clear that the Assize Court had not stated its reasons for finding him guilty. The applicant noted that the investigation in his case had been conducted in a heated atmosphere which had not been conducive to the smooth administration of justice. Furthermore, he had always denied having been involved in the minister's murder and no irrefutable evidence of his guilt had been adduced. The investigators had had regard to mere inferences, whose probative value and relevance he had disputed. However, his arguments had not been addressed.

40. The Court reiterates that, according to its settled case-law, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, 9 December 1994, § 29 and § 27 respectively, Series A nos. 303-A and 303-B, and *Higgins and Others v. France*, 19 February 1998, § 42, *Reports of Judgments and Decisions* 1998-I). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 61). Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for

the lower court's decision (see, *mutatis mutandis*, *Helle v. Finland*, 19 December 1997, §§ 59-60, *Reports* 1997-VIII, and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I).

41. The requirement for reasons to be given must also accommodate any unusual procedural features, particularly in assize courts, where the jurors are not required to give reasons for their personal convictions.

42. The Court notes that in the *Zarouali* and *Papon* cases (both cited above), the Commission and the Court found that “although the jury could answer only 'yes' or 'no' to each of the questions put by the President, those questions formed a framework on which the jury's decision was based”, that “the precision of those questions sufficiently offsets the fact that no reasons are given for the jury's answers” and that “this appraisal is reinforced by the fact that the Assize Court must state its reasons for refusing to refer a question from the prosecution or the defence to the jury”.

43. However, since the *Zarouali* case there has been a perceptible change in both the Court's case-law and the Contracting States' legislation. In its case-law the Court has frequently held that the reasoning provided in court decisions is closely linked to the concern to ensure a fair trial as it allows the rights of the defence to be preserved. Such reasoning is essential to the very quality of justice and provides a safeguard against arbitrariness. Thus, certain States, such as France, have made provision for the right of appeal in assize court proceedings and for the publication of a statement of reasons in assize court decisions.

44. The Court considers that while it is acceptable for a higher court to set out the reasons for its decisions succinctly by simply endorsing the reasons for the lower court's decision, the same is not necessarily true of a court of first instance, particularly one sitting in a criminal case.

45. The Court notes that the Assize Court's judgment in the applicant's case was based on thirty-two questions that were put to the jury at his trial. The applicant was concerned by four of them, which the Court considers it useful to reiterate:

“Question no. 25 – PRINCIPAL COUNT

Is the accused Richard Taxquet, who is present before this court, guilty,

as principal or joint principal,

of having knowingly and intentionally killed [A.C.] in Liège on 18 July 1991?

Question no. 26 – AGGRAVATING CIRCUMSTANCE:

Was the intentional homicide referred to in the previous question premeditated?

Question no. 27 – PRINCIPAL COUNT

Is the accused Richard Taxquet, who is present before this court, guilty,

as principal or joint principal,

...

of having attempted knowingly and intentionally to kill [M.-H.J.] in Liège on 18 July 1991, the intention to commit the offence having been manifested by conduct which objectively constituted the first step towards perpetration of the offence and which was halted or failed to attain the aim pursued only as a result of circumstances outside the control of its perpetrator?

Question no. 28 – AGGRAVATING CIRCUMSTANCE:

Was the attempted intentional homicide referred to in the previous question premeditated?”

46. The jury answered all the questions in the affirmative.

47. The Court further notes that the same questions were put to the jury in respect of all eight defendants and were not adapted to each individual case. In this connection, the Court observes that in the case of *Goktepe v. Belgium* (no. 50372/99, 2 June 2005), where admittedly there were objective aggravating circumstances, it found a violation of Article 6 on account of the Assize Court's refusal to put distinct questions in respect of each defendant as to the existence of such circumstances, thereby denying the jury the possibility of determining the applicant's individual criminal responsibility.

48. In the instant case, the questions to the jury were formulated in such a way that the applicant could legitimately complain that he did not know why each of them had been answered in the affirmative when he had denied all personal involvement in the alleged offences. The Court considers that such laconic answers to vague and general questions could have left the applicant with an impression of arbitrary justice lacking in transparency. Not having been given so much as a summary of the main reasons why the Assize Court was satisfied that he was guilty, he was unable to understand – and therefore to accept – the court's decision. This is particularly significant because the jury does not reach its verdict on the basis of the case file but on the basis of the evidence it has heard at the trial. It is therefore important, for the purpose of explaining the verdict both to the accused and to the public at large – the “people” in whose name the decision is given – to highlight the considerations that have persuaded the jury of the accused's guilt or innocence and to indicate the precise reasons why each of the questions has been answered in the affirmative or the negative.

49. In these circumstances, the Court of Cassation was prevented from carrying out an effective review and from identifying, for example, any insufficiency or inconsistency in the reasoning.

50. The Court concludes that there has been a violation of the right to a fair trial, as guaranteed by Article 6 § 1 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

51. The applicant complained that he had not at any time been able to examine or have examined the anonymous witness whose statements had been decisive for his conviction, and that, in any event, it had been impossible to know whether they had been decisive as no reasons had been given for the jury's guilty verdict. The applicant further complained about the Assize Court's refusal to hear or rehear evidence from certain witnesses. He relied on Article 6 § 3 (d), which provides:

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

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

#### A. The anonymous witness

##### 1. *Admissibility*

52. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court notes, moreover, that that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

##### 2. *Merits*

###### (a) The parties' submissions

53. The Government submitted that, contrary to what the applicant maintained, the information supplied by the anonymous informer had not been decisive for his conviction. That was particularly clear from the fact that in its interlocutory judgment of 18 December 2003 the Assize Court had held that the information supplied by the informer could not be admitted in evidence and was not reliable as it was not corroborated by any other evidence. It was important to note in that connection that one of the other defendants had directly accused the applicant.

54. The Government observed that the applicant had not indicated the identity of the witnesses whom he had been unable to have reheard, but they presumed that he was referring to the witnesses whom he had wished to cross-examine a second time according to the submissions he had filed at the hearing on 12 December 2003, namely S.N, J.M., L.L. and A.R. Those

witnesses had all given evidence to the Assize Court and the applicant and his counsel had been able to put to them any questions they wished and to challenge any evidence adduced by the prosecution and the civil parties. With regard to the persons not featuring on the list of witnesses submitted to the Assize Court before the start of the trial and the witness who had refused to appear in court, the Government pointed out that the Assize Court had held that the examination of those witnesses would tend to prolong the proceedings needlessly and would not produce any results. They noted that Article 6 § 3 (d) in principle left it to the domestic courts to decide whether the examination of witnesses was necessary.

55. The applicant contended that the question of the anonymous witness testimony took on particular significance in his case as it was linked to the preceding complaint concerning the lack of reasoning in the Assize Court's judgment. In order to be able to find that a witness statement had played a decisive role in a person's conviction, it was necessary to know the reasons for the decision, but in the present case none had been given. If the reasoning had been known, it might have been possible to identify the information received anonymously as having been a decisive factor, or the sole factor, in establishing his guilt.

56. The applicant asserted that he had not been given all the necessary guarantees that the members of the jury were intellectually capable of reasoning in decisive terms, even though professional judges had previously drawn their attention to that issue. In the applicant's submission, it would have been possible to proceed in a manner that respected everyone's rights; it was not unfeasible to hear evidence from masked or hidden witnesses at a public hearing in the Assize Court, or during an investigation, as was shown by the case of *Van Mechelen and Others v. the Netherlands* (23 April 1997, Reports 1997-III).

**(b) The Court's assessment**

*(i) General principles*

57. The Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Van Mechelen and Others*, cited above, § 50, and *De Lorenzo v. Italy* (dec.), no. 69264/01, 12 February 2004). As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the present case under both provisions taken together (see, among many other authorities, *Van Geyseghe v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I).

58. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence; as a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see *Lüdi v. Switzerland*, judgment of 15 June 1992, § 49, Series A no. 238, and *Van Mechelen and Others*, cited above, § 51). As the Court has stated on a number of occasions (see, among other authorities, *Isgrò v. Italy*, 19 February 1991, § 34, Series A no. 194-A, and *Lüdi*, cited above, § 47), it may prove necessary in certain circumstances for the judicial authorities to refer to depositions made during the investigative stage. If the defendant has been given an adequate and proper opportunity to challenge the depositions, either when made or at a later stage, their admission in evidence will not in itself contravene Article 6 §§ 1 and 3 (d). The corollary of that, however, is that the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at the trial (see *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX, and *Saïdi v. France*, 20 September 1993, §§ 43-44, Series A no. 261-C).

59. This applies all the more in the case of depositions made by anonymous witnesses. Although the Convention does not preclude reliance, at the investigation stage, on sources such as anonymous informants, the subsequent use of their statements by the trial court to found a conviction is capable of raising issues under the Convention (see *Kostovski v. the Netherlands*, 20 November 1989, § 44, Series A no. 166; *Windisch v. Austria*, 27 September 1990, § 30, Series A no. 186; and *Doorson v. the Netherlands*, 26 March 1996, § 69, *Reports* 1996-II).

60. The Court further reiterates that Article 6 § 3 (d) of the Convention leaves it to the domestic courts, again as a general rule, to assess whether it is appropriate to call witnesses. It does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words “under the same conditions”, is full equality of arms in the matter. The concept of “equality of arms” does not, however, exhaust the content of paragraph 3 (d) of Article 6, nor that of paragraph 1, of which this phrase represents one application among many others. It is not enough to prove that the “accused” was unable to question a certain witness for the defence. He must also put forward a plausible argument that the appearance of the witness was necessary for ascertaining the truth and that the failure to examine the witness prejudiced the rights of the defence (see, among other authorities, *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). Accordingly, only exceptional circumstances may prompt the Court to

conclude that the failure to hear a person as a witness was incompatible with Article 6 (see *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158, and *Destrehem v. France*, no. 56651/00, 18 May 2004).

*(ii) Application of the above principles in the present case*

61. The Court observes at the outset that it is required to apply the above-mentioned principles in the particular context of the proceedings as conducted in the Assize Court.

62. As regards the part of the complaint concerning the anonymous witness, the Court observes that the applicant submitted that his conviction had been based to a decisive extent on the statements of an anonymous witness whom he had not been able to examine or to have examined at any stage of the proceedings. The Government asserted that the statements in question had not been admitted in evidence before the Assize Court.

63. The Court observes, firstly, that the applicant, in his defence submissions, sought the examination by an investigating judge of the anonymous witness who had provided information that was noted down by two non-commissioned gendarmerie officers. The information, which concerned the planning of A.C.'s murder, was set out in fifteen points, only one of which referred to the applicant, whose name appeared as one of a group of people said to have planned the murder. It appears from the interlocutory judgment of 18 December 2003 that that witness, whose identity was unknown to the Assize Court, had not been interviewed by an investigating judge and that the information he supplied served simply to "[give] fresh impetus or a new slant to the investigation and [to lead] to the independent gathering of lawful evidence".

64. The Court further notes that in seeking to remain anonymous, the witness referred to the importance of his information and the media impact of the case. In that connection, the Belgian legal system allows senior police officers to refuse to divulge the identity of an informer with a view to protecting the latter. However, the Court considers it desirable, in the interests of the proper administration of justice, that anonymous statements should be examined by a judge who knows the identity of the witness, has verified the reasons for granting anonymity and is able to express an opinion on the witness's credibility in order to establish whether there is any animosity between the witness and the accused.

65. The fact that the jurors, who are not professional judges, base their verdict on their personal conviction and are not required to give reasons for their decision means that they are not bound by any hierarchy in the types of evidence they take into consideration. However, these procedural features do not make it possible to ascertain whether the conviction is based to a significant extent on other evidence not derived from anonymous sources.

66. In the instant case it is unclear from the case file whether the conviction of the applicant, who has always denied the offence, was based

on objective evidence, or solely on the information supplied by the anonymous witness, or, as indicated in the indictment, solely on the statement by one of the co-defendants accusing him. The Government submitted that the investigation had shown that part of the information supplied by the anonymous witness was irrelevant. However, they have not produced anything to show that the finding of the applicant's guilt was based on other real evidence, on inferences drawn from the examination of other witnesses or on other undisputed facts.

67. As the applicant was unable to examine or have examined the anonymous witness at any stage of the proceedings, and as there was no assessment of the reliability of the witness's evidence by an investigating judge, the applicant's misgivings as to the use made of the witness's statements may be regarded as justified.

68. That being so, the Court considers that the procedure in the Assize Court in the instant case, taken both as a whole and in relation to its specific features, hindered the exercise of the applicant's defence rights. Accordingly, he did not have a fair trial.

69. There has therefore been a violation of Article 6 §§ 1 and 3 (d) of the Convention in that the applicant did not have the opportunity at any stage of the proceedings to examine or have examined the anonymous witness whose statements were decisive for his conviction.

## **B. The other witnesses**

70. With regard to the hearing or rehearing of evidence from certain other witnesses mentioned by the applicant, the Court observes that he did not give any indication of how their appearance in court, had it been allowed, would have contributed to producing new evidence relevant to his defence and to changing the Assize Court's verdict against him. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

# **IV. OTHER ALLEGED VIOLATIONS**

## **A. Status of the “tribunal”**

71. Relying on Article 6 §§ 1 and 2 of the Convention, the applicant complained that he had not been tried by a “tribunal” within the meaning of Article 6 § 1, since the twelve members of the Assize Court jury, aged between thirty and sixty, who had no legal knowledge and were drawn by lot from an electoral roll, did not provide an adequate guarantee as to the composition of a “tribunal”. He further complained that his guilt had not

been “established by law” as the members of the jury had deliberated on their own without a judge or legal adviser being present.

72. The Court notes that this complaint is similar to the one considered by the Commission in the *Zarouali* case cited above. The Commission found in that case:

“The Commission observes that the Assize Court consists of a President and two judges and that in criminal matters it sits with a jury (Article 119 of the Judicial Code). Once the jury has expressed its views on the accused's guilt, the penalty is determined at the close of deliberations by the panel of judges and the jury.

The Commission has held that a tribunal within the meaning of Article 6 of the Convention need not necessarily be composed solely of professional judges or jurists (in particular No. 4622/70, Dec. 22.3.72, Collection 1).

The Commission recalls that 'in order to establish whether a body can be considered “independent”, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and to the question whether or not the body presents an appearance of independence ...'

The Commission further observes that, apart from the statement that the members of the jury are not professional judges, the applicant adduces no other concrete and specific evidence to justify his legitimate reasons to fear a lack of independence and impartiality on their part.

Recalling that 'under the Constitution (Articles 99 and 100) and by statute, the three judges of whom Belgian assize courts are composed enjoy extensive guarantees designed to shield them from outside pressures, and the same purpose underlies certain of the strict rules governing the nomination of members of juries', the Commission considers that the applicant cannot legitimately claim that he was tried by a tribunal which did not satisfy the requirement of impartiality (Eur. Court H.R., Piersack judgment of 1 October 1982, Series A no. 53, p. 13, para. 27).

Considering that the constitution of the jury is determined by lot, that before the proceedings commence each of the parties has the opportunity to challenge an equal number of jurors, that in this case each member of the jury undertook under oath to discharge his task to the best of his ability and with complete impartiality, that the applicant had the opportunity to apply to have the case heard by a differently composed jury on the ground of bias, and that in the absence of sufficiently substantiated arguments in support of the allegation regarding the lack of impartiality of the jury, the Commission considers that in the present case this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.”

73. The Court considers that there is nothing in the present case to distinguish it from the *Zarouali* case.

74. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## **B. Impartiality**

75. Relying on Article 6 §§ 1 and 2 of the Convention, the applicant submitted that the Assize Court had not been impartial on account of the excessive media coverage of the case, which had been widely discussed for more than twelve years, and on account of that court's refusal to restart the proceedings when a co-defendant who had failed to appear at the beginning of the trial was subsequently allowed to take part.

76. The Court observes that it has already had occasion to address this issue, for example in *Craxi v. Italy* (no. 34896/97, 5 December 2002); *Garaudy v. France* ((dec.), no. 65831/01, ECHR 2003-X); and *Papon* (cited above). It held that, in certain cases, a virulent press campaign could prejudice the fairness of the trial by influencing public opinion and, consequently, the jurors called upon to decide on the guilt of an accused.

77. However, the Court notes that in the present case the applicant has not shown that there was such a virulent media campaign against him personally as to sway the outcome of the Assize Court's deliberations concerning him. Rather, he complained about the role of the press, which had interviewed a large number of witnesses, published statements by them and disclosed information deriving directly from the file on the investigation; he also submitted those arguments to the Court of Cassation, which found that "the press reports, even if inaccurate, malevolent or resulting from a criminal offence, could not in themselves cause the trial to breach Article 6 §§ 1 and 2 of the Convention".

78. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## **C. Communication with a lawyer**

79. Relying on Article 6 § 3 (b) of the Convention, the applicant submitted that he had not had an adequate opportunity to communicate freely with his counsel as he had been detained the day before the start of the trial in the Assize Court and had not been allowed to consult the criminal case file (which ran to several hundred thousand pages and had been stored on CD-ROM) when his counsel had come to visit him in prison.

80. The Court reiterates that domestic remedies have not been exhausted where an appeal is dismissed as a result of a procedural error on the applicant's part (see, among many other authorities, *Askis and Others v. Greece*, no. 48229/99, 22 June 2000). It notes that in the present case the Court of Cassation dismissed this argument on the ground that the applicant had not submitted it before the Assize Court.

81. It follows that this part of the application must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

#### D. Effective remedy

82. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant complained that an appeal against the Assize Court's judgment lay only to the Court of Cassation, which did not determine cases on their merits.

83. The Court observes that the Articles relied on do not guarantee any right of appeal and that, moreover, Belgium is not a party to Protocol No. 7. In addition, the Court has held on a number of occasions that the fact that the review conducted by a supreme court is restricted to questions of law is not in breach of Article 6 § 1 (see, *mutatis mutandis*, *Loewenguth v. France* (dec.), no. 53183/99, ECHR 2000-VI; *Pesti and Frodl v. Austria* (dec.), nos. 27618/95 and 27619/95, ECHR 2000-I; *Deperrois v. France* (dec.), no. 48203/99, 22 June 2000; and *Ramos Ruiz v. Spain* (dec.), no. 65892/01, 19 February 2002).

84. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

#### E. Difference in treatment

85. Relying on Article 6 § 1 and Article 14 of the Convention, the applicant submitted that the difference in the treatment of a defendant in the Assize Court as compared with a defendant in an ordinary criminal court, in terms of the possibilities of appealing, had no objective and reasonable justification, seeing that defendants in the Assize Court were in a more complex legal position, being accused of more serious offences.

86. According to the Court's settled case-law, Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

87. The Court notes that the applicant's complaint under Article 14 concerns the organisation and conduct of proceedings in the Assize Court and the court's composition. It observes that in the present case the difference in treatment relates not to different groups of people but to the type of offence and its seriousness under the law (see, *mutatis mutandis*, *Budak and Others v. Turkey* (dec.), no. 57345/00, 7 September 2004). The Court does not consider that such a practice constitutes a form of discrimination contrary to the Convention. This part of the application must therefore be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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.”

### A. Damage

89. The applicant claimed 150,000 euros (EUR) in respect of pecuniary damage, representing the sum he would have been able to earn had he carried on working during his five years in prison, on the basis of a monthly income of EUR 2,500. He also claimed EUR 100,000 for the non-pecuniary loss resulting from the damage to his honour and reputation.

90. The Government submitted that the applicant had not shown that there was the requisite causal link between the violation complained of and the alleged pecuniary damage. As to non-pecuniary damage, they considered his claim excessive.

91. The Court considers that an award of just satisfaction must be based in the present case on the fact that the applicant did not have a fair trial on account of the lack of reasoning in the Assize Court's judgment and the failure to examine an anonymous witness. It cannot speculate as to the outcome of the trial had the applicant had the benefit of the safeguards set forth in Article 6 of the Convention. It accordingly dismisses the applicant's claim in respect of pecuniary damage. On the other hand, the applicant undeniably sustained non-pecuniary damage as a result of the breach, although it is difficult to quantify the damage. Making its assessment on an equitable basis, as required by Article 41, the Court therefore awards him the sum of EUR 4,000.

92. Lastly, the Court refers to its settled case-law to the effect that in the event of a violation of Article 6 § 1 of the Convention the applicant should as far as possible be put in the position he would have been in had the requirements of that provision not been disregarded. The Court reiterates that, where it finds that an applicant has been convicted after not being afforded one of the safeguards of a fair trial, the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, in due course and in accordance with the requirements of Article 6 of the Convention (see, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003; *Tahir Duran v. Turkey*, no. 40997/98, § 23, 29 January 2004; *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-V; and *Öcalan c. Turquie* [GC], no. 46221/99, ECHR 2005-IV).

## B. Costs and expenses

93. The applicant claimed EUR 8,173.22 for costs and expenses incurred before the Court.

94. The Government left the matter to the Court's discretion.

95. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, for example, *Entreprises Robert Delbrassine S.A. and Others v. Belgium*, no. 49204/99, § 35, 1 July 2004, and *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). In the present case, on the basis of the documents submitted by the applicant and the above-mentioned criteria, the Court considers that the sum claimed is reasonable and awards it in full.

## C. Default interest

96. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1 (lack of reasoning in the Assize Court's judgment) and Article 6 § 3 (d) of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of the right to a fair trial, as guaranteed by Article 6 § 1 of the Convention, on account of the lack of reasoning in the Assize Court's judgment;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the failure to examine the anonymous witness;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 8,173.22 (eight thousand one hundred and seventy-three euros and twenty-two cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Sally Dollé  
Registrar

Ireneu Cabral Barreto  
President