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

THIRD SECTION

DECISION

Application no. 44116/12
Paulus Adrien HERRIE
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 20 November 2018 as a Committee composed of:
Dmitry Dedov, *President*,
Alena Poláčková,
Jolien Schukking, *judges*,
and Fatoş Aracı, *Deputy Section Registrar,*
Having regard to the above application lodged on 29 May 2012,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Paulus Adrien Herrie, is a Netherlands national, who was born in 1956 and lives in The Hague. He is represented before the Court by Mr B.D.W. Martens, a lawyer practising in The Hague.

A. The circumstances of the case

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

1. Introduction

3. Until 2001 the applicant was employed by the BVD (*Binnenlandse Veiligheidsdienst*, National Security Service; renamed *Algemene Inlichtingen- en Veiligheidsdienst*, General Intelligence and Security Service or AIVD in 2002). In his official capacity he had access to classified

information (*gerubriceerde informatie*), which he was under a duty not to divulge to persons not authorised to have knowledge of it.

4. The suspicion arose that the applicant had forwarded copies of classified documents to persons outside the service, in particular to a known criminal by the name of K. The fact that these documents had been found in the possession of K. came to the knowledge of journalists who later published excerpts in the daily newspaper *De Telegraaf* (see *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, no. 39315/06, 22 November 2012).

5. The applicant was charged with, firstly, having unlawfully taken unauthorised possession of State secret information; and secondly, with having published it, or in the alternative, having divulged it to persons unauthorised to take cognisance of it (to wit, K.).

6. It appears that the applicant was relieved of his duty of secrecy under certain conditions by the acting Head of the AIVD so that he could conduct a proper defence.

7. A number of AIVD members were questioned before the investigating judge (*rechter-commissaris*); they were made unrecognisable to the defence by the use of disguise and voice distortion.

2. Proceedings in the Regional Court

8. The hearing opened on 21 August 2006 before the Regional Court (*rechtbank*) of The Hague.

9. The defence asked for sixteen witnesses to be heard, including AIVD members referred to by a number, and for the documents the applicant was suspected of having published or divulged to be added to the case file for the information of the trial court. The applicant refused to answer the charges, stating that he did not know what he was permitted to say.

10. After deliberations, the Regional Court ordered the documents requested to be added to the file in order that the defence should be in a position to assess their nature. It also agreed that the witnesses requested by the defence should be heard, including AIVD members, and remitted the case to the investigating judge for that purpose.

11. The documents requested by the defence were added to the case file in redacted form, with parts made illegible by the AIVD. The applicant was allowed to inspect the unredacted documents in the chambers of the investigating judge, under the following conditions:

- No one but the applicant himself was permitted to see the unredacted documents;
- The applicant’s counsel was permitted to be present, but not to see the unredacted documents himself;
- The applicant was permitted to indicate to his counsel the documents or pages which he wished to discuss.

Questioned by the investigating judge, the applicant confirmed that the unredacted documents which he had seen were identical to the redacted documents (with the exception of one page of text).

12. The hearing was resumed on 16 October 2006. Arguing that it was not for the AIVD to decide on the composition of the case file, the defence protested against the addition to the file of the documents requested in redacted form and asked for the unredacted documents to be added to the file instead. The Regional Court noted that the applicant himself had had access to the unredacted documents, albeit under strict conditions, but that the applicant's counsel had not; it reasoned that the AIVD had a responsibility of its own, grounded in the tasks placed on it by law, to decide which documents should be added to the file of the criminal proceedings.

13. The hearing was resumed on 6 November 2006. The public prosecutor stated that while the applicant had been granted access to the unredacted State secret documents, his counsel had not; the applicant would however be permitted to discuss the content of these documents with his counsel.

14. The hearing was resumed on 15 November 2006. The Regional Court ordered the submission of AIVD reports (*ambtsberichten*) relating, for each document,

(a) whether the unredacted version was identical to the redacted version contained in the case file;

(b) without disclosing the secret information itself, the nature of the information contained in each of the passages made illegible and the State security interest at stake;

(c) the precise classification – top secret, secret or confidential – of the information, and if possible, the reasons therefor.

The Regional Court also ordered the submission of reports of verification by the National Public Prosecutor for Counter-Terrorism (*Landelijke Officier van Justitie Terrorismebestrijding*).

15. The hearing was resumed on 8 January 2007. The public prosecutor confirmed that quotations that had appeared in the newspaper *De Telegraaf* had been taken from documents made available to the investigating judge and identified by the Head of the AIVD as State secret.

16. The hearing was resumed on 29 and 30 January 2007. The defence asked for all anonymous informants who had provided AIVD information to be heard. The applicant himself admitted to having had access to some of the leaked documents but denied that he was the only person in that position. He also admitted to having gone bankrupt as a result of investments that had failed.

17. The hearing was resumed on 10 and 12 April 2007. Named witnesses were heard. The press and the public were excluded from part of the hearing, in which classified documents were discussed with a witness.

That witness refused to answer some of the questions put to him by the defence, invoking section 85 of the 2002 Intelligence and Security Service Act (*Wet op de inlichtingen- en veiligheidsdiensten 2002*).

18. The hearing was resumed on 23 May 2007. Named witnesses were heard. During a part of the hearing from which the press and the public were excluded a classified document was discussed with a witness.

19. The hearing was resumed on 16 and 17 July 2007. The Regional Court decided to hear itself two AIVD members referred to by numbers, who had been heard by the investigating judge, the hearing to take place by audio link and the witnesses to be in possession of unredacted classified documents in order to confirm their classified nature. The applicant's counsel stated that the applicant knew the two AIVD members personally and stated that he did not need to see them himself. He objected however to their being heard by audio link only and to being left in possession of redacted documents while the witnesses held unredacted documents.

20. On 17 July 2007 two AIVD members, designated by the numbers "AIVD4" and "AIVD1", were heard as witnesses. The witnesses had previously been heard by the National Police Internal Investigations Department (*Rijksrecherche*) and the investigating judge (see paragraph 7 above). The witnesses were in a separate room, accompanied by a member of the legal staff of the AIVD tasked with advising the witness on his duty of secrecy, a third AIVD member whose attendance was considered necessary because of the presence of unredacted classified documents, and a registrar (*griffier*) of the Regional Court. There was an audio link with voice distortion between the witnesses and the hearing room. All those present in the hearing room could hear what was said. The witnesses refused to answer a number of questions concerning the AIVD's working practices with regard to classified documents.

21. Questioning on behalf of the applicant was conducted by defence counsel. In the course of the questioning of witness "AIVD1" the applicant's counsel protested against what he considered to be interference by the member of the AIVD's legal staff with the witness's answers. This witness identified the applicant as the only person who had had access to the complete set of documents that had come to be in the possession of the newspaper *De Telegraaf*.

22. The hearing was resumed on 3 and 4 September 2007. The prosecution and the defence made their closing addresses. The applicant asked to be permitted to name a person who had been a BVD informant behind closed doors; he added that the person had already been heard as a witness in the proceedings and that naming this person might lend credibility to an alternative explanation of events. The public prosecutor announced his intention to prosecute the applicant if he named any informant. The applicant desisted.

23. The hearing was formally closed on 8 October 2007. The Regional Court gave judgment on 22 October 2007. It found the applicant guilty of having unlawfully taken possession of State secret information and sentenced him to two years' imprisonment.

3. Proceedings in the Court of Appeal

24. The applicant appealed to the Court of Appeal (*gerechtshof*) of The Hague.

25. The appeal hearing opened on 25 March 2009. As relevant to the case before the Court, the defence again asked to see unredacted copies of the leaked documents in order to be able to assess their nature as State secret. The Court of Appeal refused this, their classification as State secret making it impossible to distribute copies and further noting that the unredacted documents did not form part of the case file and were not qualified as "case documents" (*processtukken*). The defence did have copies of the redacted documents. The press and the public were excluded from part of this hearing.

26. Witnesses were heard by the investigating judge on various dates.

27. The main hearing took place on 20 May 2009. The press and the public were excluded from part of it. As relevant to the case before the Court, the applicant stated that he had been permitted to inspect the unredacted documents; he confirmed their State secret nature. He confirmed in addition that they corresponded to the redacted versions (with the exception of one page of text); he had gone over them with his counsel, he inspecting the unredacted versions, his counsel comparing the information they contained with the redacted versions. He also confirmed that he had had access to all of the documents but denied that he had been the only person in that position. He claimed that he had been framed by persons who bore him a grudge.

28. In the course of the main hearing, the advocate general prosecuting stated that the applicant had, during the closed part of the hearing of 25 March 2009, made statements incompatible with his duty of secrecy. The Court of Appeal took the view that the duty of secrecy could apply even at a hearing from which the press and the public were excluded. It was recognised that there existed a certain tension between the interests of national security and the rights of the defence, but it was nonetheless for the prosecution to make the primary decision whether a breach of the duty of secrecy could be justified by the contrary interests, and if not, whether further prosecution was indicated. It would then be for a new trial court to consider whether the prosecution was justified, which would involve questions of proportionality and subsidiarity. The Court of Appeal held that in the context of the current proceedings it was tasked with supervising the fairness of the proceedings before it and had to determine at the end of the proceedings whether the applicant had had a fair trial despite the limitations

in issue. In sum, the Court of Appeal agreed with the Regional Court that the suspect should be in a position to state what was necessary for his defence. This need reflected that whatever the suspect did should meet the requirements of proportionality and subsidiarity.

29. The advocate general prosecuting made his closing address on 3 June 2009, as did the defence on 10 June. As relevant to the case before the Court, the applicant's counsel complained under Article 6 §§ 1 and 3 (c) that the applicant had been prevented from naming an AIVD informant by the public prosecutor's threat to prosecute him if he did so; that he had been denied access to unredacted copies of the leaked documents; that he had been denied access to additional State secret documents that, as appeared from the evidence of the witnesses "AIVD4" and "AIVD1", must exist; and that the evidence of the witnesses "AIVD4" and "AIVD1" was unlawful.

30. The Court of Appeal gave judgment on 24 June 2009. It found the applicant guilty of having unlawfully taken possession of State secret information and sentenced him to two years' imprisonment. It grounded the conviction on the fact that the applicant had been one of a limited number of persons who had had access to the documents in issue; statements of witnesses from which it appeared that the applicant had been in unlawful possession of the information concerned; and the absence of any realistic alternative explanation for the delivery of the documents into the hands of the journalists. The Court of Appeal's reasoning included the following:

> "9.1.2. The Court of Appeal agrees with the defence that in a trial such as the present the State secret nature of the content of the documents to which the prosecution relates imposes limits on the openness in which the case can be dealt with, as well as (in principle) on statements that the suspect and witnesses drawn from AIVD-related circles can make. These limitations are connected with the necessity that that which must remain (State) secret with a view to the AIVD's discharge of its duties should in principle not be made available to the public, in certain circumstances not even at a hearing from which the press and the public are excluded.
>
> The mere fact that the said openness is subject to limitations does not, in the judgment of the Court of Appeal, imply that the suspect is denied the right to a fair trial; such an absolute position would imply that in a case such as the present enforcement of criminal law would not be possible in the legal order. It will however have to be considered, in the light of the limitations that have occurred and the compensation offered for that reason, whether those limitations – the proceedings seen as a whole – are of such a nature that they have unacceptably impinged on the suspect's right to a fair trial."

and

> "9.1.5. a) As to the examination of the materials inculpating the applicants, it concerns, on the one hand, the assessment of the 'Telegraaf of documents' (the files that belonged in a safe) and on the other the relationship that might be identified between those documents and the suspect. Following the AIVD's report (*aangifte*) several witnesses from the AIVD were heard, including two 'key witnesses' (AIVD 1 and AIVD 4) whom it was possible to question no less than three times in the presence of the defence. In addition, the AIVD has submitted extensive further and

elaborated information concerning the nature of the leaked documents (the files that belonged in a safe), which was verified in part by the National Public Prosecutor for Counter-terrorism (*Landelijke Officier van Justitie Terrorismebestrijding*). Moreover, during the appeal hearing the suspect himself confirmed the assessment of the Supervisory Board for Intelligence and Security Services (*Commissie van toezicht voor de inlichtingen- en veiligheidsdiensten*) of the leaked documents and the BVD investigation from which they came.

9.1.6. As to the unredacted documents that play a role in the present case the Court of Appeal takes the following view. These documents are not part of the case file (...). Requests by the defence for them to be included have been refused by the Regional Court – eventually – and by the Court of Appeal, relying on – as stated by the AIVD – the (State secret) nature of those documents. By way of compensation for this, the suspect has, at first trial, been offered the opportunity to see those documents and consult his counsel in the matter. The redacted documents have been laid open for inspection by the suspect and his counsel both at first instance and on appeal.

9.1.7. The defence has thus been able to gain an insight in the – presumed – interrelation between the redacted and the unredacted documents. In addition, the defence has, in the opinion of the Court of Appeal, been able to inform itself sufficiently of the nature and content of those documents, as is sufficiently apparent from what the suspect himself has stated on that point at the appeal hearing. Moreover, given his former position in the BVD, as it then was, the suspect already had knowledge of (at least a considerable number of) the documents concerned, as regards their nature, subject and content. In this respect, therefore, the Court of Appeal considers that the defence has been sufficiently compensated.

The Court of Appeal takes the view that the suspect's defence rights have not in any way been unduly limited.

9.1.8. b) The same applies, to a considerable extent, to the reliance by the witnesses from the AIVD on their duty of secrecy. Unanswered questions cannot impugn the suspect; to the extent that any witness might have declined an answer that might have disculpated the suspect, it concerns mostly issues concerning the rigidity of the secrecy within the BVD (or the lack thereof) and the internal distribution of State secret documents during the time when the suspect worked there. However, others – in addition to the suspect – have made disculpating statements on that subject. The latter statements have led the Court of Appeal to attribute only limited value to certain information that in itself is incriminating. As a consequence, the silence of the witnesses referred to does no actual harm to the defence.

9.1.9. c) With regard to the suspect himself there has on two occasions been a possible limitation on his presenting everything necessary for his defence. The Court of Appeal refers to a note that the suspect has eventually submitted to the Regional Court at first instance (which gave rise to new discussions on appeal) and statements about a particular witness which ultimately the suspect did not make at first instance. Given however that those statements have eventually been made on appeal, the suspect has (ultimately) been limited in his defence on neither point.

In any event, the suspect's counsel has not in any way indicated specifically in what respect the suspect might otherwise have been harmed in his defence by the said limitations; it does not appear to the Court of Appeal that there might have been any such harm. That said, the Court of Appeal recognises that *in abstracto* a suspect who makes use of his defence rights by not respecting his duty of secrecy is in an uncomfortable position because he will have to trust that his reliance on the need to do so will be honoured by the public prosecution service or the trial court. The Court of

Appeal fails to see, however, that equality of arms or the *nemo tenetur* principle might be in issue in such a case.

9.1.10. d) As to the (im)possibility of getting disculpating information 'above board' the Court of Appeal notes that especially at first instance there have been extensive investigations into 'alternative scenarios' for the leaking of the 'Telegraaf documents'; in addition, a further scenario (...) has been examined on appeal. The fact that the Court of Appeal has not honoured further requests is based on the circumstance that these requests were insufficiently argued or supported by evidence.

It has not in any way appeared to the Court of Appeal that the defence has been limited in any relevant way in its assessment as a result of secrecy obligations. Nor has a plausible case been made out that there has been any limitation of the possibility to search for disculpating information.

9.1.11. The Court of Appeal is accordingly of the view that it cannot be said that the proceedings were such that as a result of limitations on openness (or anything else) the suspect's right to a fair trial has been affected. There is therefore no ground for declaring the prosecution inadmissible (or any other sanction)."

4. Proceedings in the Supreme Court

31. The applicant lodged an appeal on points of law (*cassatie*) with the Supreme Court (*Hoge Raad*). The statement of grounds of appeal (*cassatieschriftuur*) can be understood as encompassing complaints about the threat of prosecution should he go further in making statements in his defence than the prosecution would allow, even at a hearing from which everyone was excluded but the prosecution itself and the court; about the refusal to grant counsel the same rights as the applicant himself as regards inspecting the unredacted documents; and about the invocation by the two AIVD witnesses of their duty of secrecy, which had denied him the possibility to clarify the origin of the documents, or in the alternative, to suggest an alternative explanation for the leak.

32. In his advisory opinion (*conclusie*), the Procurator General (*procureur-generaal*) to the Supreme Court expressed the view that the handicaps of the defence had been compensated for in that the applicant had been given the opportunity to take cognisance of the unredacted documents that did not belong to the case file. It was pointed out that the applicant had not made any specific request to be relieved of his duty of secrecy; that statements which had been prevented at first instance had been allowed to be made on appeal; that questions left unanswered by the AIVD witnesses had concerned primarily the rigidity of the secrecy and the distribution of documents within the service but that there was no indication of what else they might have withheld; and that in any case the question how precisely the documents in issue had left the premises of the AIVD was not essential to the case before the Court of Appeal.

33. The Supreme Court gave judgment on 29 November 2011. It upheld the Court of Appeal's judgment in so far as the applicant complained that no compensation had been provided for the defence handicaps, referring

explicitly to the relevant passages of that judgment (see paragraph 30 above). It dismissed the remainder of the appeal on summary reasoning. It reduced the sentence to one year and eleven months since the proceedings before the Supreme Court itself had exceeded a reasonable time.

B. Relevant domestic law

1. The Criminal Code

34. Provisions of the Criminal Code relevant to the case before the Court are the following:

Article 98

"1. Anyone who deliberately delivers or makes available intelligence (*inlichting*) which needs to be kept secret in the interest of the State or its allies, an object from which such intelligence can be derived, or such data (*gegevens*) to a person or body not authorised to take cognisance of it, shall, if he knows or ought reasonably to be aware that it concerns such intelligence, such an object or such data, be sentenced to a term of imprisonment not exceeding six years or a fifth-category fine [i.e. up to 74,000 euros (EUR)]. ..."

Article 98c

"1. The following shall be sentenced to a term of imprisonment not exceeding six years or a fifth-category fine:

i. anyone who deliberately takes or keeps intelligence, an object or data as referred to in Article 98 without being duly authorised;

ii. anyone who undertakes any action with intent to obtain intelligence, an object or data referred to in Article 98 without being duly authorised; ..."

2. The 2002 Intelligence and Security Services Act

35. Provisions of the 2002 Intelligence and Security Services Act relevant to the case before the Court are the following:

Section 6

"1. There shall be a General Intelligence and Security Service [i.e. the AIVD].

2. The [AIVD]'s tasks, in the interest of national security, are the following:

a. to carry out investigations relative to organisations and persons who, by the aims which they pursue or their activities, give rise to serious suspicion (*het ernstige vermoeden*) that they constitute a danger to the continued existence of the democratic legal order or to the security or other weighty interests of the State;

b. ...

c. to promote measures (*het bevorderen van maatregelen*) for the protection of the interests mentioned in sub-paragraph a, including measures aimed at securing data which need to be kept secret in the interest of national security and of those parts of Government service and private enterprise (*bedrijfsleven*) which in the judgment of

the Ministers invested with responsibility in the matter are of vital importance for the maintenance of social life (*de instandhouding van het maatschappelijk leven*);

d. to carry out investigations concerning other countries relative to subject-matter indicated by the Prime Minister, Minister of General Affairs (*Minister-President, Minister van Algemene Zaken* [the Prime Minister being both at the same time]), in agreement with other Ministers involved; ..."

Section 85

"1. Without prejudice to Articles 98-98c of the Criminal Code, everyone who is involved in the execution of this Act and thereby enters into the possession of data the confidential character of which he knows or ought reasonably to suspect (*en daarbij de beschikking krijgt over gegevens waarvan hij het vertrouwelijke karakter kent of redelijkerwijs moet vermoeden*) shall have a duty to keep it secret except in so far as a legal provision places him under an obligation to divulge it. ..."

Section 86

"1. The duty of secrecy owed by an official involved in the execution of this Act shall not apply *vis-à-vis* the person to whom the official is directly or indirectly subordinate, nor to the extent that he has been exonerated from that duty by a superior.

2. The official referred to in the first paragraph, if obliged pursuant to a legal provision to act as a witness or an expert, shall only make a statement about the matters covered by his duty of secrecy to the extent that the Minister concerned and the Minister of Justice together have exonerated him from that duty in writing. ..."

3. The Information specific to State Service (Security) Order

36. Provisions of the Information specific to State Service (Security) Order (*Voorschrift informatiebeveiliging rijksdienst-bijzondere informatie*, also known domestically as "Vir-bi") relevant to the case are the following:

Section 1

"In this Order:

'State secret' shall mean: specific knowledge which needs to be kept secret in the interest of the State or its allies;

'Classify' shall mean: to establish and indicate that particular information (*een gegeven*) constitutes specific information and to determine and indicate the level of security to be assigned to this information."

Section 5

"State secrets shall be classified as follows:

a. State secret TOP SECRET (*Stg. ZEER GEHEIM*), if the interests of the State or its allies can be very seriously harmed should unauthorised persons take cognisance thereof;

b. State secret SECRET (*Stg. GEHEIM*), if the interests of the State or its allies can be seriously harmed should unauthorised persons take cognisance thereof;

c. State secret CONFIDENTIAL (*Stg. CONFIDENTIEEL*), if the interests of the State or its allies can be harmed should unauthorised persons take cognisance thereof."

4. Classification of the identity of AIVD staff members

37. It is reflected in the drafting history of the 2002 Intelligence and Security Services Act (Parliamentary Documents, Lower House of Parliament (*Kamerstukken II*) 1997-98, 25877, no. 3 (Explanatory Memorandum (*Memorie van Toelichting*), page 93) that the identity of AIVD staff may, depending on the circumstances, be State secret.

COMPLAINTS

38. The applicant invokes Article 6 §§ 1 and 3 (b) of the Convention. The Court understands his complaints to be the following:

a) The applicant's right to question prosecution witnesses was limited, because the witnesses – being AIVD members – were allowed to remain anonymous and were dispensed from answering certain questions;
b) The applicant was not provided with copies of the State secret documents requested;
c) The applicant's counsel was not allowed to inspect State secret documents in their unredacted form;
d) The applicant was threatened with prosecution if he discussed State secrets, even though the press and the public were excluded from part of the trial.

THE LAW

39. The applicant complained that the criminal proceedings against him were unfair in that he had been denied access to potentially disculpating evidence, that his counsel did not have the same right of access to the evidence as he did, and that he was prevented from submitting factual information which he considered necessary in his defence. He alleged violations of Article 6 §§ 1 and 3(b), which provides as follows:

"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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly

necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

...

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

...

(b) to have adequate time and facilities for the preparation of his defence; ..."

1. The denial of access to potentially disculpating evidence

40. The Court will consider together the applicant's complaints that he was prevented from effectively cross-examining the prosecution witnesses and that he was denied copies of State secret documents which might have contained disculpating evidence.

41. The Court notes that these complaints are very summarily argued, but that the thrust of the applicant's defence appears to have been that a person other than he might have unlawfully taken possession of the State secret information in issue.

42. 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, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports of Judgments and Decisions* 1997-III; *Lhermitte v. Belgium* [GC], no. 34238/09, § 83, ECHR 2016; and *Seton v. the United Kingdom*, no. 55287/10, § 57, 31 March 2016).

43. The Court observes that the present case is unlike *Van Mechelen and others*, cited above, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, ECHR 2015 in that the defence was not denied the possibility to cross-examine prosecution witnesses with a view to testing the veracity of statements made by them earlier in the proceedings. Rather, it is the applicant's case that he was denied access to State secret information that might have been capable of casting doubt on his guilt. As the Court held in *M v. the Netherlands*, no. 2156/10, § 112, ECHR 2017 (extracts), it is, in itself, a perfectly legitimate defence strategy in criminal cases to create doubt as to the authorship of a crime by demonstrating that the crime could well have been committed by someone else. It does not, however, entitle the suspect to make specious demands for information in the hope that perchance an alternative explanation may present itself.

44. Taking into account the circumstances of the case (see paragraphs 25-30 above), the Court cannot consider that the Court of Appeal acted

unreasonably or arbitrarily in holding that the applicant's defence was not materially impaired by the conditions under which those witnesses who were not refused him were questioned and in not providing copies of (unredacted) State secret documents which he had requested.

45. Accordingly, these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The refusal to allow the applicant's counsel to inspect the unredacted State secret documents

46. The Court observes that the applicant in person was permitted to inspect the State secret documents unredacted and discuss their content with his counsel. The question before the domestic courts being solely whether they were properly State secret – which the applicant actually admitted (see paragraph 27 above) –, the Court fails to see how the refusal to allow counsel the same access to them could impinge on the fairness of the proceedings.

47. Accordingly, this complaint too is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. The refusal to allow the applicant to disclose State secrets

48. In agreement with the Court of Appeal (paragraph 9.1.9 of its judgment, see paragraph 30 above), the Court notes, firstly, that although certain statements were forbidden to be made at first instance, the applicant was permitted to make them on appeal; and secondly, that the applicant has not specified in what way the refusal to allow him to disclose State secrets might otherwise have impaired his defence. The applicant's complaint based on the refusal to allow him to disclose State secrets is therefore unsubstantiated.

49. It follows that this complaint is likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 December 2018.

Fatoş Aracı
Deputy Registrar

Dmitry Dedov
President