



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

FIFTH SECTION

CASE OF AGNELET v. FRANCE

(Application no. 61198/08)

JUDGMENT
(Extracts)

STRASBOURG

10 January 2013

FINAL

01/02/2013

This judgment is final but it may be subject to editorial revision.

In the case of Agnelet v. France,

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

Mark Villiger, *President*,

Angelika Nußberger,

Boštjan M. Zupančič,

Ann Power-Forde,

André Potocki,

Helena Jäderblom,

Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 61198/08) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Maurice Agnelet (“the applicant”), on 11 December 2008.

2. The applicant was represented by Mr F. Saint-Pierre, a lawyer practising in Lyons. The French Government (“the Government”) were represented by their Agent, Ms E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. The applicant alleged a violation of Article 6 § 1 of the Convention on account of the lack of reasoning in a judgment of the Assize Court of Appeal.

4. On 27 September 2011 the application was declared partly inadmissible, with the exception of the complaint concerning the lack of reasoning in the Assize Court of Appeal’s judgment; notice of that complaint was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and is currently in prison.

6. In late October 1977 Agnès Le Roux (“A.R.”), a twenty-nine-year-old woman, went missing in unexplained circumstances and for unknown

reasons; she has never been seen again. A.R. was a director and partner, together with others including her mother, R.R., in the company that ran the Palais de la Méditerranée, a casino in Nice.

1. First set of proceedings

7. On 13 February 1978 R.R. lodged a criminal complaint alleging false imprisonment. On 1 March 1978 a judicial investigation was opened in respect of that allegation. From 4 February 1980 this became a murder investigation and R.R. lodged a further criminal complaint.

8. On 13 August 1983 the applicant, who was A.R.'s lawyer and also her lover, was charged with her murder by the investigating judge at the Nice *tribunal de grande instance*. He was remanded in custody, before being released on 7 October 1983.

9. On 29 September 1985 the public prosecutor filed submissions recommending that the charges be dropped.

10. On 30 September 1985 the investigating judge made an order finding that there was no case to answer.

11. On 23 April 1986 the Indictment Division of the Aix-en-Provence Court of Appeal upheld the order.

12. In a judgment of 1 February 1988 the Court of Cassation dismissed an appeal on points of law by R.R.

2. Second set of proceedings

13. On 24 October 1994 and 4 November 1997 R.R. lodged criminal complaints against the applicant and his estranged wife F.L. respectively, accusing the former of concealment of a body and the latter of aiding and abetting concealment of a body; in both cases she applied to join the proceedings as a civil party.

14. On 11 June 1999 F.L. admitted that she had given false evidence at the applicant's instigation in her statement to the police in 1979, having stated that she had gone to Switzerland with the applicant on 27 and 28 October 1977.

15. In a judgment of 7 December 2000 the Investigation Division of the Aix-en-Provence Court of Appeal ordered the reopening of the investigation into A.R.'s disappearance and murder. It held that the declaration by F.L. constituted fresh incriminating evidence within the meaning of the Code of Criminal Procedure, strengthening the existing evidence which had previously been judged insufficient.

16. On 20 December 2000 the investigating judge placed the applicant under formal investigation for murder and made a court supervision order.

17. On 14 June 2001 the investigating judge arranged a confrontation between F.L. and the applicant.

18. On 21 February 2002, 25 June 2003 and 18 March 2004 the Investigation Division of the Aix-en-Provence Court of Appeal dismissed applications by the applicant for the charges to be dropped.

19. In a judgment of 26 October 2005 the Investigation Division of the Aix-en-Provence Court of Appeal committed the applicant for trial in the Alpes-Maritimes Assize Court. In its judgment, which ran to ninety-three pages, it dismissed an objection that the investigations into the alleged offence of concealment of a body had been unlawful as they had resulted from an abuse of process by the civil party in the form of a spurious accusation. It further held that the fact that the victim's body had never been discovered did not prove that no crime had been committed; on the contrary, the disappearance of the body might have been an aspect of the crime designed to thwart any useful inquiries. Furthermore, after noting that the applicant was the only person charged with murder in the case, it observed that it would be appropriate to examine his attitude towards the missing person's family and the proceedings. The Investigation Division found that the applicant had indulged in a series of lies, omissions and changes of story that could not be explained by his anxiety at being held in police custody or the fear of making statements that could jeopardise his career as a lawyer. It concluded that sufficient evidence had been gathered in the proceedings to suggest that the applicant had intentionally killed A.R. in order to appropriate the sum of three million French francs.

20. The applicant appealed on points of law against that judgment. He argued, in particular, that the judgment had not specified the factual circumstances in which the alleged offence had been committed, thus making it impossible for him to mount an effective defence.

21. On 15 February 2006 the Court of Cassation dismissed the applicant's appeal, pointing out that the judicial investigating bodies had the ultimate authority to assess whether the acts of which a person under investigation was accused amounted to a criminal offence.

22. In a judgment of 20 December 2006 the Alpes-Maritimes Assize Court acquitted the applicant. The public prosecutor appealed.

23. A second trial was held in the Bouches-du-Rhône Assize Court from 17 September to 11 October 2007.

24. The following questions were put to the court and the jury:

Principal questions:

"1 – Is the accused Maurice Agnelet guilty of having deliberately killed [A.R.] in Nice (*département* of Alpes-Maritimes) between 26 October and 2 November 1977, or in any event within national territory and outside the period to which the time-limit for prosecution applies?

2 – Prior to committing the murder referred to above, had the accused Maurice Agnelet formed the intention to commit that offence?"

Subsidiary questions:

“3 – Is it established that [A.R.] was deliberately killed in Nice (*département* of Alpes-Maritimes) between 26 October and 2 November 1977, or in any event within national territory and outside the period to which the time-limit for prosecution applies?”

4 – Was the murder referred to in question no. 3 premeditated?

5 – Is the accused Maurice Agnelet guilty of having given instructions for the commission of the murder referred to in question no. 3 and further defined in question no. 4 in Nice (*département* of Alpes-Maritimes) between 26 October and 2 November 2007 [*sic*], or in any event within national territory and outside the period to which the time-limit for prosecution applies?”

– Is the accused Maurice Agnelet guilty of having knowingly facilitated, through aid or assistance, the preparation or commission of the murder referred to in question no. 3 and further defined in question no. 4 in Nice (*département* of Alpes-Maritimes) between 26 October and 2 November 2007 [*sic*], or in any event within national territory and outside the period to which the time-limit for prosecution applies?”

25. The answer given to the two principal questions was “yes, by a majority of at least ten”, and the subsidiary questions were found to be “devoid of purpose”.

26. In a judgment of 11 October 2007 the Assize Court found the applicant guilty of murdering A.R. and sentenced him to twenty years’ imprisonment. The judges of the court ordered the applicant’s immediate detention and, in a separate judgment on the civil claim, ordered him to pay damages to the civil parties.

27. The applicant appealed on points of law. He submitted several grounds of appeal, including a complaint that no reasons had been given for the Assize Court’s verdict.

28. In a judgment of 15 October 2008 the Court of Cassation dismissed the appeal. Addressing the argument that the Assize Court’s judgment had not contained reasons, it held that the requirements of Article 6 of the Convention had been satisfied, concluding that “all the replies, as set out both in the first-instance Assize Court’s judgment acquitting [the applicant] and in the Assize Court of Appeal’s judgment convicting him, which the judges and jury at both levels of jurisdiction gave on the basis of their personal conviction to the questions put to them in accordance with the order committing him for trial, serve as reasons for the Assize Court’s judgments on the criminal charges”.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

29. The relevant provisions of the Code of Criminal Procedure, as applicable at the material time, read as follows:

Article 231

“The assize court has full jurisdiction to try at first instance or on appeal those persons committed for trial before it as a result of the indictment.

It may not hear any other charge.”

Article 240

“The assize court comprises the court proper and the jury.”

Article 243

“The court proper comprises the presiding judge and the other judges.”

Article 254

“The jury is made up of citizens appointed in accordance with the provisions of the following Articles.”

Article 317

“The defendant must be represented by counsel at the trial.

If the lawyer chosen or appointed in accordance with Article 274 does not appear in court, the president shall officially assign one.”

Article 327

“The president shall ask the defendant and the jury to listen attentively to the committal order and, where the assize court is sitting as a court of appeal, the questions put to the assize court that heard the case at first instance, the answers to the questions, the decision and the sentence imposed.

He shall ask the clerk to read out the appropriate information.”

Article 347

“The president shall declare the oral proceedings closed.

He may not sum up the arguments submitted by the prosecution and the defence.

He shall give directions for the case file to be handed over to the clerk of the assize court; however, with a view to the deliberations provided for in Articles 355 et seq., he shall retain a copy of the Investigation Division's judgment.

If during the deliberations the assize court considers it necessary to examine one or more documents in the case file, the president shall direct that the file be brought to the deliberation room, where it shall be opened for that purpose in the presence of the public prosecutor and counsel for the defendant and for the civil party."

Article 348

"The president shall read out the questions which the court and jury must answer. The questions do not need to be read out if they are set out in the indictment or if the defendant or his counsel waives this right."

Article 350

"If it emerges at the hearing that there were one or more aggravating circumstances which were not mentioned in the committal order, the president shall ask one or more special questions."

Article 351

"If it emerges at the hearing that the alleged offence warrants a different legal classification from that set out in the indictment, the president shall ask one or more subsidiary questions."

Article 353

"Before the assize court withdraws to deliberate, the president shall read out the following instruction, which shall also be 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 simply asks them this one question, which encompasses the full scope of their duties: 'Are you inwardly convinced?''"

Article 356

"The court and the jury shall deliberate, and shall then vote, in writing and by separate and successive ballots, first on the principal offence and, where appropriate, on grounds for exemption from criminal responsibility, on each of the aggravating

circumstances, on the subsidiary questions and on each of the aspects constituting a legal cause for exemption from or reduction of the penalty.”

Article 357

“Each of the judges and members of the jury shall receive for this purpose an open ballot paper bearing the stamp of the assize court and the following words: ‘Upon my honour and my conscience, my finding is ...’.

He shall then write or cause to be written in secret the word ‘yes’ or ‘no’ on a table placed in such a way that no one can see the vote written on the ballot paper. After filling in and closing the ballot paper, he shall hand it to the president, who shall deposit it in a box designed for this purpose.”

Article 370

“Where appropriate, after delivering the judgment the president shall, where applicable, inform the defendant of his right to lodge an ordinary appeal or an appeal on points of law as the case may be, and shall inform him of the time-limit for such an appeal.”

B. Case-law of the Court of Cassation

30. The Court of Cassation has held that “it is a fundamental principle that the assize court must try the charge resulting from the oral proceedings and not the one previously established in the written proceedings” (Court of Cassation, Criminal Division, 12 May 1970, *Bull. crim.* no. 158).

31. With regard to reasoning, it has inferred from Articles 353 and 357 of the Code of Criminal Procedure that judgments by assize courts involving a conviction cannot contain any statements as to guilt other than those resulting from the set of answers, serving as reasons, which the judges and jury gave to the questions put to them in accordance with the committal order; a judgment containing any other information, for example clarifying the factual circumstances and aspects of the defendant’s personality, is liable to be quashed (Court of Cassation, Criminal Division, 15 December 1999, *Bull. crim.* no. 308).

32. Provided that information has been given in advance as to the charges forming the basis of the indictment, the rights of the defence have been freely exercised and the proceedings have been public and adversarial, the Assize Court’s judgment satisfies the requirements of a fair trial (Court of Cassation, Criminal Division, 14 October 2009, *Bull. crim.* no. 170).

C. Decision no. 2011 – 113/115 (QPC) of the Constitutional Council

33. Following a request for a preliminary ruling on constitutionality, the Constitutional Council ruled that the lack of reasoning in judgments of

assize courts did not infringe the right to a fair and just criminal process. In its view, the requirement to give reasons in criminal cases amounted to a legal guarantee of the constitutional requirement for legislation to prevent any arbitrary decisions by the courts in accordance with the principle that only the law can define a crime and prescribe a penalty. Not including reasons could be justified on condition that appropriate safeguards were provided by law to preclude any arbitrariness. The Constitutional Council considered that such safeguards were afforded in proceedings before the assize courts, for the following reasons: the principle that proceedings were conducted orally (only evidence adduced orally and examined by the parties in the defendant's presence was taken into account in the deliberations) and were uninterrupted (the judges and jury deliberated immediately after the oral proceedings ended); the requirement for the assize court to determine the case on the basis of a reasoned judicial decision, namely the order by the investigating judge or the judgment of the Investigation Division committing the accused for trial; the detailed arrangements concerning deliberations within the assize court; the requirement for the assize court and its president to ensure that the questions put to the court were clear, precise and geared to the circumstances of each individual; and the principle that the verdict was the direct expression of the personal conviction of the members of the jury, seeing that all decisions that were unfavourable to the defendant had to be adopted by at least an absolute majority of the jury.

D. Law no. 2011-939 of 10 August 2011

34. This law amended Article 327 of the Code of Criminal Procedure and also introduced a new Article 365-1:

Article 327

“The president of the assize court shall give a concise summary of the acts of which the defendant is accused, as resulting from the committal order.

He shall set out the evidence for and against the defendant as referred to, in accordance with Article 184, in the committal order.

Where the assize court hears an appeal, the president shall also indicate the general decision reached at first instance, the reasons behind it and, where applicable, the sentence imposed.

In his summary, the president must not manifest his own opinion as to the defendant's guilt.

At the end of his summary, the president shall read out the legal classification of the acts forming the subject of the indictment.”

Article 365-1

“The president or one of the other judges designated by him shall draw up the reasons for the judgment.

In the event of a conviction, the reasoning shall consist of a statement of the main items of evidence against the defendant which persuaded the assize court in respect of each of the charges against him. This relates to the evidence examined during the deliberations conducted by the court and the jury in accordance with Article 356, prior to the voting on the questions.

The reasons shall be set out in a document appended to the question sheet known as the ‘statement of reasons form’, which shall be signed in accordance with Article 364.

Where the particular complexity of the case, on account of the number of defendants or the offences with which they are charged, makes it impossible to draw up the statement of reasons form immediately, it shall be drafted, added to the case file and filed with the registry of the assize court no later than three days after the judgment is delivered.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION**

35. The applicant complained that he had been denied the right to a fair trial on account of the lack of reasoning in the Assize Court of Appeal’s judgment. He relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

36. The Government contested that argument.

...

B. Merits*1. The parties’ submissions*

46. The applicant explained that the Constitutional Council’s decision of 1 April 2011, given after his conviction, had not settled the problems encountered by judges and counsel during proceedings in the assize courts, in the absence of clear and established rules. For that reason, the Government had implemented a reform as a matter of some urgency, by incorporating the requirement to give reasons for assize court judgments in

the bill on the introduction of juries in lower criminal courts. However, the resulting Law no. 2011-939 of 10 August 2011, which had come into force on 1 January 2012, had not amended the provisions of the Code of Criminal Procedure concerning questions to the jury, and so there was still no opportunity for counsel to put additional questions to the jury about the factual details of the alleged offence.

47. He submitted that this change to the law showed, in hindsight, that the questions put to the jury in assize courts were inadequate as they were not worded in such a way as to allow the defence to put forward sufficiently detailed arguments. Similarly, it was obvious that nobody could have understood the reasons for the judgment convicting him, even in the light of the two questions and the indictment (he referred to *Taxquet v. Belgium* [GC], no. 926/05, ECHR 2010). Although the indictment had given a detailed account of the background to A.R.'s disappearance and her relationship with the applicant, it had not contained any information about the essential elements of any criminal charge: where, when and how had the alleged offence been committed? Only through the answers to these questions could he have understood the verdict, especially as no reasons had been given for the departure from the assessment of the first-instance assize court, which had acquitted him. The applicant pointed out that besides the allegation of murder, there were two other possible explanations for A.R.'s death, based on precise and established factual circumstances: the victim had disappeared of her own accord before committing suicide, or she had been killed by the Mafia during what was commonly known as the "casino war" on the Côte d'Azur in 1977. He also explained that he had applied for a retrial on account of fresh witness evidence indicating that A.R. had been murdered by the Marseilles Mafia following the sale of her shares in the Palais de la Méditerranée casino under conditions that had prevented the Mafia from adding the casino to the others it effectively controlled.

48. Accordingly, the applicant submitted that the guilty verdict had not provided any indication either of the reasons why the Assize Court of Appeal had overturned the acquittal reached by the Assize Court in Nice less than a year previously, or of the evidence on which its decision had been based. He emphasised that the Assize Court of Appeal had simply answered "yes" to the question whether he was guilty.

49. The Government submitted, in the light of the criteria set forth in the *Taxquet v. Belgium* Chamber judgment of 13 January 2009, that the criminal proceedings in the present case had satisfied the Convention requirements. They stated firstly that the requirement to give reasons for court decisions, which did not appear in the Convention, was to be seen as just one aspect of the proceedings, which needed to be examined as a whole. As a result, the Court had not criticised the fact that in French law, judgments of assize courts did not contain reasons; the finding by a Chamber to that effect in the *Papon v. France* decision of 15 November

2001 (no. 54210/00, § 26, ECHR 2001-XII) had thus been confirmed by the Grand Chamber in the *Taxquet* judgment (cited above, §§ 90 and 93). A statement of reasons was not the only means of understanding the decision, since the assize court's finding as to guilt resulted from reasoning which the defendant could understand and reconstruct through a set of safeguards afforded during the trial (they cited *Taxquet*, cited above, § 92).

50. The Government added that all defendants were entitled to have not only the committal order or the Investigation Division's judgment read out in court, but also, in proceedings before assize courts of appeal, the questions put to the first-instance assize court, its answers and its decision.

51. They pointed out that the charges were read out and were then the subject of adversarial argument. During the trial in the assize court, each item of evidence was examined and the defendant was assisted by counsel, whose role was also to inform and advise his or her clients.

52. The Government emphasised that the judges and jury withdrew to deliberate immediately after the oral proceedings had ended and the questions had been read out. Since they did not have access to the case file, they could only discuss the evidence examined by the parties during the trial. Unlike the Belgian system, in which the jury deliberated on their own, the French system assigned a significant role to professional judges throughout the proceedings and during the deliberations.

53. Lastly, the Government observed that since the Law of 15 June 2000, decisions of assize courts were subject to review by an enlarged assize court of appeal, a stage that had been lacking in the *Taxquet* case (cited above, § 99).

54. With regard to the applicant's specific circumstances, the Government submitted, *inter alia*, that the indictment, which formed the basis for the referral of the case to the Assize Court and for the principal questions to be answered by the jury, had contained particularly thorough reasoning. The Investigation Division had taken care to explain the aspects justifying the criminal trial: after giving a detailed description of the alleged offence and the investigative measures taken, it had set out all the evidence that might be used against the applicant. The applicant, who had been assisted by counsel throughout the investigation, had been aware of all these aspects because he had appealed to the Court of Cassation against the indictment. The Government added that at the trial in the Assize Court of Appeal, not only had the indictment been read out, but also the judgment given by the Assize Court at first instance, the questions to the jury and their answers. The applicant had been assisted by lawyers, who on several occasions had filed submissions that had given rise to a decision. In particular, he had been free to present his defence and to comment on each item of evidence produced at his trial.

55. Regarding the principal questions put to the jury by the president, there had been two of them and they had been sufficiently precise and

relevant to serve as a basis for the decision to convict him, especially as, unlike in the *Taxquet* case, the applicant had been the sole defendant.

2. *The Court's assessment*

(a) *General principles*

56. The Court reiterates that the Convention does not require jurors to give reasons for their decision and that Article 6 does not preclude a defendant from being tried by a lay jury even where reasons are not given for the verdict. The absence of reasons in a judgment, owing to the fact that the applicant's guilt has been determined by a lay jury, is not in itself contrary to the Convention (see *Saric v. Denmark* (dec.), no 31913/96, 2 February 1999, and *Taxquet*, cited above, § 89).

57. Nevertheless, for the requirements of a fair trial to be satisfied, the accused, and indeed the public, must be able to understand the verdict that has been given; this is a vital safeguard against arbitrariness. As the Court has often noted, the rule of law and the avoidance of arbitrary power are principles underlying the Convention (see *Taxquet*, cited above, § 90). In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society (see *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003; *Tatishvili v. Russia*, no. 1509/02, § 58, ECHR 2007-III; and *Taxquet*, cited above).

58. The Court further reiterates that in the case of assize courts sitting with a lay jury, any special procedural features must be accommodated, seeing that the jurors are usually not required – or not permitted – to give reasons for their personal convictions (see *Taxquet*, cited above, § 92). In these circumstances, Article 6 requires an assessment of whether sufficient safeguards were in place to avoid any risk of arbitrariness and to enable the accused to understand the reasons for his conviction. Such procedural safeguards may include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced, and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict is based or sufficiently offsetting the fact that no reasons are given for the jury's answers (*ibid.*; see also *Papon*, cited above). Lastly, regard must be had to any avenues of appeal open to the accused.

59. Seeing that compliance with the requirements of a fair trial must be assessed on the basis of the proceedings as a whole and in the specific context of the legal system concerned, the Court's task in reviewing the absence of a reasoned verdict is to determine whether, in the light of all the circumstances of the case, the proceedings afforded sufficient safeguards against arbitrariness and made it possible for the accused to understand why he was found guilty (see *Taxquet*, cited above, § 93). In doing so, it must

bear in mind that it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies (see *Salduz v. Turkey* [GC], no. 36391/02, § 54, ECHR 2008; and *ibid.*).

60. In the *Taxquet* judgment (cited above) the Court examined the combined impact of the indictment and the questions to the jury. It noted that although the indictment, which was read out at the start of the trial, indicated the nature of the offence and the circumstances determining the sentence, as well as containing a chronological sequence of the investigative measures and the statements taken from witnesses, it did not specify “which items of evidence the prosecution could use against” the accused. Above all, the Court observed that in practice this was of “limited effect” since it was filed “before the trial itself, which must serve as the basis for the jurors’ personal conviction” (*ibid.*, § 95).

61. The questions put in the *Taxquet* case, totalling thirty-two for eight defendants, including only four that related to the applicant, had been succinctly worded and identical for all the defendants, making no reference to “any precise and specific circumstances that could have enabled the applicant to understand why he was found guilty”, in contrast to the *Papon* case, in which the Assize Court had referred to the jury’s answers to each of the 768 questions put by the court’s president (*ibid.*, § 96).

62. It can be inferred from the *Taxquet* judgment (cited above) that a combined examination of the indictment and the questions to the jury must make it possible to ascertain which of the items of evidence and factual circumstances discussed at the trial ultimately caused the jury to answer the questions concerning the defendant in the affirmative, in order to be able to: distinguish between the co-defendants; understand why a particular charge was brought rather than another; determine why the jury concluded that the involvement of certain co-defendants had been limited, carrying a lesser sentence; and discern why aggravating factors were taken into account (*ibid.*, § 97). In other words, the questions must be both precise and geared to each individual (*ibid.*, § 98).

(b) Application of these principles in the present case

63. The Court observes at the outset that all defendants in French criminal proceedings, like the applicant, are provided with certain information and afforded certain safeguards: the indictment, or the judgment of the investigation division in the case of an appeal, is read out in full by the clerk at the trial in the assize court; the charges are read out and are then the subject of adversarial argument, each item of evidence being examined and the defendant being assisted by counsel; the judges and jury withdraw to deliberate immediately after the oral proceedings have ended and the questions have been read out, without having access to the case file; accordingly, their decision can only be based on the evidence examined by

the parties during the trial. Furthermore, decisions of assize courts are subject to review by an enlarged assize court of appeal.

64. With regard to the combined impact of the indictment and the questions to the jury in the present case, the Court observes firstly that applicant was the sole defendant and the case was very complex.

65. In addition, as the parties agreed, the effect of the indictment was limited since it was filed before the trial itself, which forms the crucial part of the proceedings. The Court observes, however, that the indictment makes it clear that the offence of murder had not been formally established and that, as a result, the place, time and circumstances of the alleged offence remained unknown; moreover, the applicant had always denied the offence. As to the findings of fact set out in the indictment and their value in assisting an understanding of the guilty verdict against the applicant, the Court cannot speculate as to whether such findings influenced the Assize Court's deliberations and the judgment it ultimately delivered. It must be acknowledged, however, that these findings necessarily left many things uncertain because the explanation for A.R.'s disappearance was inevitably based on suppositions.

66. As regards the questions, they were all the more important in that, as the Government themselves indicated, the judges and jury did not have access to the case file during the deliberations and based their decision solely on the evidence examined by the parties at the trial, although in this particular case, in accordance with Article 347 of the Code of Criminal Procedure, they also had access to the indictment.

67. The Court further notes that a great deal was at stake as the applicant was sentenced to twenty years' imprisonment having previously been told that there was no case to answer and having later been acquitted.

68. Since the subsidiary questions in his case were found to be devoid of purpose, only two questions were put to the jury: the first was whether the applicant had intentionally murdered A.R. and the second was, if so, whether the murder had been premeditated.

69. The Court can only conclude, in view of the considerable complexity of the case, that these questions were succinctly worded and made no allusion to the specific circumstances. It notes, firstly that the applicant had been acquitted at first instance and, secondly, that the reasons for and manner of A.R.'s disappearance, including the possibility of premeditated murder, were based on mere suppositions in the absence of formal evidence, such as the discovery of the body or physical evidence firmly establishing the place, time and *modus operandi* of the murder of which the applicant was accused. Accordingly, the questions made no reference to "any precise and specific circumstances that could have enabled the applicant to understand why he was found guilty" (see *Taxquet*, cited above, § 96).

70. Admittedly, the prosecution appealed, which, as the Government noted, made a review of the first-instance judgment possible (see paragraph

53 above). However, besides the fact that no reasons were given for that judgment either, the appeal resulted in a differently constituted assize court being given the task of re-examining the case file and reassessing the factual and legal issues in the course of a fresh trial. It follows that the applicant was unable to infer any relevant information from the first-instance proceedings as to why he was convicted on appeal by a different jury and different professional judges, especially as he had initially been acquitted.

71. In conclusion, the Court considers that the applicant was not afforded sufficient safeguards enabling him to understand why he was found guilty.

72. Lastly, the Court takes note of the reform implemented since the time of the events, following the enactment of Law no. 2011-939 of 10 August 2011 which, among other things, introduced a new Article 365-1 into the Code of Criminal Procedure providing that the reasons for the assize court's judgment are now to be set out in a "statement of reasons form" appended to the question sheet. In the event of a conviction, the Law requires the statement of reasons to refer to the evidence examined in the course of the deliberations which persuaded the assize court in respect of each of the charges brought against the accused. In the Court's view, this reform appears, on the face of it, to significantly strengthen the safeguards against arbitrariness and to help the accused understand why they were convicted, thus meeting the requirements of Article 6 § 1 of the Convention.

73. There has therefore been a violation of Article 6 § 1 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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."

75. The applicant, who contended that he had suffered considerable non-pecuniary damage, nevertheless did not submit a claim for just satisfaction, stating that he wished above all to be found innocent after a retrial. In addition, his lawyer stated that he had represented him free of charge.

76. Accordingly, the Court considers that it is not necessary to make an award to the applicant under Article 41 of the Convention, while emphasising that he does indeed have the opportunity to apply for a rehearing of his case, since the Law of 15 June 2000 on reinforcing the presumption of innocence and victims' rights has incorporated into the Code of Criminal Procedure a Part III concerning "review of a criminal decision following a judgment of the European Court of Human Rights".

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in French, and notified in writing on 10 January 2013, pursuant to Rules 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President