



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

FIFTH SECTION

CASE OF SHABELNIK v. UKRAINE

(Application no. 16404/03)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Shabelnik v. Ukraine,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Zdravka Kalaydjieva, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 16404/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Dmitriy Grigoryevich Shabelnik (“the applicant”), on 2 April 2003.

2. The applicant, who had been granted legal aid, was represented by Mr A. Bushchenko, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that his conviction for the murder of Mrs K. was based on incriminating evidence obtained in violation of his right to remain silent and the privilege against self-incrimination and that he had been hindered in the effective exercise of his right to defence when questioned at the pre-trial stage of the proceedings concerning the murder of Mrs K.

4. On 15 January 2008 the Court declared the application partly inadmissible and decided to communicate the above complaints under Article 6 §§1 and 3 of the Convention to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and is currently in prison in the city of Zhytomyr, Ukraine.

6. On 10 December 2001 the applicant was arrested on suspicion of kidnapping and murdering a minor, S. During the arrest the applicant sustained light bodily injuries, which were recorded by a forensic medical expert.

7. On 13 December 2001 the Bogunsky District Court of Zhytomyr ordered the applicant's detention.

8. On 17 December 2001 the applicant was provided with a lawyer.

9. On 19 December 2001 the applicant was charged with the above-mentioned crime, following an investigation during which the applicant had shown the police the places in which S.'s corpse and some of her belongings had been hidden.

10. On 15 February 2002 the applicant, allegedly under pressure by the investigator, wrote a letter requesting that he be questioned "about events that took place at the end of October 2001 at the address 5, maidan Rad, in Zhytomyr". In his letter he mentioned that he did not require the assistance of a lawyer during the interview. According to the stamp on the letter it was received by the Zhytomyr Prosecutor's Office on 18 February 2002.

11. On 15 February 2002, allegedly upon the above request, he was questioned by the investigating prosecutor, Sh., as a witness about the circumstances of the death of Mrs K. During this questioning, without a lawyer, the applicant confessed to the murder of Mrs K. (The criminal investigation into the murder of Mrs K. had been initiated on 29 October 2001. On 25 December 2001 Mr K., son of the late Mrs K., was questioned by the investigating prosecutor, Sh., as a witness and confessed to the murder of his mother. The next day he retracted his confession. On 27 December 2001 the criminal case against Mr K. was closed for lack of *corpus delicti*.) In his testimony the applicant submitted that he had needed money and having read in a newspaper about the intention of Mrs K. to buy an apartment had decided to rob her. Having gone to her home and having found that she had no money, he killed her. The applicant gave numerous details about the apartment, the victim and the way he killed her. The minutes of the applicant's questioning stated that he had been told about his duty to state everything he knew about the case and the criminal liability for refusal to give testimony and for giving false testimony under Articles 385 and 386 of the Criminal Code. It was also indicated in the minutes that the provisions of Article 63 of the Constitution had been explained to the applicant.

12. On 16 February 2002 the applicant, still as a witness, participated without a lawyer in an on-site reconstruction of the events of the murder of Mrs K.

13. On the same day the applicant was examined by a forensic expert who did not report any signs of ill-treatment on his body. According to the applicant this report was falsified, given that a previous medical examination conducted on 22 January 2002 had revealed several injuries on his body, the traces of which could not have disappeared in less than a month.

14. On 18 February 2002 the applicant was additionally questioned, without a lawyer, by the prosecutor concerning the circumstances of purchasing the knife which the applicant had used to kill Mrs K.

15. On 22 February 2002 the applicant was repeatedly questioned without a lawyer about the knife because it had been established that the shop in which he had allegedly bought it did not sell knives. The applicant changed his testimony and said that he had killed Mrs K. with another knife taken from his father.

16. On 25 February 2002 the investigating prosecutor Sh. instituted criminal proceedings against the applicant for the murder of Mrs K. and joined them with the criminal case concerning the kidnapping and murder of S.

17. On 3 April 2002 the applicant was charged with both the kidnapping and murder of S. and the murder of K.

18. On 22 May 2002 the criminal case was referred to the Zhytomyr Regional Court of Appeal, acting as a first-instance court. According to the applicant, at this stage he requested the court to allow his mother to act as his non-legal representative but this request was refused.

19. During the court hearings the applicant claimed his innocence with respect to the murder of Mrs K. He maintained that he was forced to confess. At the same time, he admitted his guilt in kidnapping S., but claimed that she was killed by some other person whom he knew only by name.

20. On 11 July 2002 the Zhytomyr Regional Court of Appeal found the applicant guilty of the kidnapping and two murders and sentenced him to life imprisonment. The applicant's conviction for murdering Mrs K. was based on his confessions, which corresponded to the information available to the investigating authorities.

21. The applicant's lawyer, D., appealed against that decision. In his cassation appeal, he complained, *inter alia*, of a violation of the applicant's right to defence and of the use of unlawfully obtained evidence by the court. He submitted that the accusation that the applicant had murdered Mrs K. had been based exclusively on the statements he had made as a witness and had not been supported by any corroborating evidence. Furthermore, he complained that some contradictions in the body of evidence had been

ignored by the court, namely that the forensic examination established that Mrs K. died not earlier than 24 October 2001 while the applicant had allegedly killed her on 23 October 2001; that the newspaper from which the applicant had allegedly learned about the intention of Mrs K. to buy an apartment was published only on 25 October 2001, after the death of Mrs K.; that, according to testimonies of witnesses, Mrs K. was not the kind of person who would let a stranger into her apartment and talk to him frankly about her personal relationships.

22. The applicant raised similar issues in his cassation appeal. He further complained that the investigation had failed to locate M., who had been his accomplice in the kidnapping case and the murderer of S.

23. On 10 October 2002 the Supreme Court of Ukraine upheld the decision of the appellate court. In reply to the complaints of the applicant and his lawyer of a violation of the right to defence, the court stated:

“The arguments of the appeals as to the violation of the right to defence of D. Shabelnik during his questioning as a witness of a crime against K. are groundless.

Having been arrested on suspicion of committing another crime, on 15 February 2002 Shabelnik D. wrote a letter stating his wish to give testimony voluntarily about the events that took place at the end of October 2001 at the address Zhytomyr, 5, maidan Rad. Since in his letter he did not indicate what information he wanted to provide, the investigating authorities rightly questioned him as a witness. The provisions of Article 63 of the Constitution were explained to him.”

24. The court further repeated the reasoning of the Zhytomyr Court of Appeal and concluded that the applicant could only have known about the circumstances of the murder of Mrs K. if he had been the offender himself.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. 1. *Constitution of Ukraine*

Article 59

Everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights.

In Ukraine, the advocacy acts to ensure the right to a defence against accusation and to provide legal assistance in deciding cases in courts and other state bodies.

Article 63

A person shall not bear responsibility for refusing to testify or to explain anything about himself or herself, members of his or her family or close relatives in the degree determined by law.

A suspect, an accused, or a defendant has the right to a defence...

2. *Code of Criminal Procedure (“the CCP”)*

26. Article 45 of the CCP stipulates that the legal representation of a suspect, accused or defendant is obligatory, *inter alia*, if the possible penalty is a life sentence.

27. Article 69 of the CCP provides that a person is entitled to refuse to give testimony as a witness about himself or herself.

28. Article 70 of the CCP provides that a person who has been called as a witness shall give truthful information about the circumstances of the case, to the best of his or her knowledge.

29. Article 71 of the CCP provides that a witness shall bear criminal responsibility for giving knowingly false testimony.

30. Article 400⁴ of the CCP provides for the extraordinary review of final judgments, in particular, in the event of serious violations of the procedural law.

3. *Criminal Code of Ukraine, 2001*

31. Under paragraph 2 of Article 115 of the Code, murder committed by a person who has previously committed a murder shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

32. Under paragraph 1 of Article 384 of the Code any knowingly false testimony by a witness during the inquiry or pre-trial investigation shall be punishable by correctional labour for a term of up to two years, or detention for a term of up to six months, or restriction of liberty for a term of up to two years.

33. Under Article 385 of the Code a groundless refusal by a witness to testify in court or during a pre-trial investigation shall be punishable by a fine or detention for a term of up to six months. At the same time it provides that refusal to testify against himself or herself during an inquiry, pre-trial investigation or in court shall not be criminally liable.

4. *Law on execution of judgments and application of case-law of the European Court of Human Rights, 2006*

34. Article 10 of the Law provides for additional individual measures with a view to execution of judgments of the Court, including review of the case by a court and reopening of the judicial proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

35 The applicant complained that his right to a fair trial was violated because his conviction for the murder of Mrs K. was based on confessions obtained from him under coercion in the absence of lawyer. He further complained that the domestic courts refused to allow his mother to act as his representative in the proceedings against him. He referred to Article 6 §§ 1 and 3 (c) of the Convention, which reads in its relevant parts:

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

...

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

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

A. Admissibility

36. The Government maintained that the applicant’s complaints about a violation of his right to defence and privilege against self-incrimination during the investigative procedures on 15 and 16 February 2002 were incompatible *ratione materiae* with the provisions of Article 6 §§ 1 and 3 (c) of the Convention. They considered that the criminal proceedings against the applicant with respect to the murder of Mrs K. only started on 25 February 2002.

37. The applicant agreed that he had only been formally charged on 25 February 2002, but maintained that the investigative procedures conducted prior to that date were aimed at obtaining evidence of his involvement in the murder of Mrs K.

38. The Court finds that the Government’s contentions concerning the applicability of Article 6 § 1 and 3 (c) are so closely linked to the merits that they should be joined to them and considered together.

39. As to the applicant’s complaint about the domestic courts’ refusal to allow his mother to act as his additional (non-legal) representative during the judicial proceedings, the Court recalls that the right to legal representation of one’s own choosing ensured by this provision is not of an absolute nature. The legal requirement for the defence counsel to hold a law

degree is not in violation of the above provision. The Court further notes that the applicant was represented by a lawyer at the time when the impugned request was made and the lawyer continued to represent him throughout the trial. There is nothing in the case file to suggest that the applicant could not have freely chosen any other counsel with the appropriate qualifications. The possibility to be represented by relatives provided by the criminal procedural law is complementary to the right to defence and cannot attract the protection of Article 6 § 3 (c) of the Convention.

40. The Court therefore rejects the applicant's complaint about the refusal to allow his mother to act as his representative and joins to the merits the Government's contentions about the applicability of Article 6 to the investigative procedures conducted with the applicant between 15 and 25 February 2002. The Court also notes that the remainder of the applicant's complaints under Article 6 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Parties' submissions

(a) The Government

41. The Government considered that Article 6 of the Convention was only applicable in the present case from the moment when the applicant had been formally charged with the murder of Mrs K. on 25 February 2002. In their opinion, the investigative procedures that had been conducted with the participation of the applicant prior to that day did not fall within the ambit of Article 6, as the applicant participated in them voluntarily as a witness and therefore did not have a right to be represented by a lawyer.

42. They further contended that, having received the applicant's testimonies about his involvement in the murder of Mrs K., the domestic authorities had to verify the credibility of those testimonies in order to avoid the unfounded institution of criminal proceedings against the applicant. They noted that prior to the applicant's confession, Mr K. had made a similar confession to murder of Mrs K., but having checked that confession the investigator found that there was no *corpus delicti* in respect of Mr K.

43. The Government compared the circumstances of the instant case with those in the cases of *Funke v. France* (25 February 1993, Series A no. 256-A) and *Saunders v. the United Kingdom* (17 December 1996, Reports of Judgments and Decisions 1996-VI), in which the Court found

violations of the applicants' rights not to incriminate themselves. The Government noted that in the above-mentioned cases the authorities had had reasonable suspicion of the applicants' involvement in crimes, while in the present case the domestic authorities had had no information about the involvement of the applicant in the murder of Mrs K. until they received his letter of 15 February 2002.

44. The Government maintained that the investigator had informed the applicant about his right not to testify against himself guaranteed by the Ukrainian Constitution. Furthermore, they noted that the applicant's arguments about coercion to confess were unsubstantiated and the Court had declared inadmissible the applicant's complaint under Article 3 of the Convention.

45. As to the use of that evidence, the Government contended that the applicant's confessions were supported by the fact that he had described Mrs K., her clothes, her apartment, her relations with relatives and neighbours and the manner in which she had been killed and stated that he had learned from a newspaper that Mrs K. wanted to sell an apartment; all this information matched with the information obtained by the police from other sources. According to the Government, the finding that Mrs K. had been killed by an object with a cutting edge and the fact that the knife the applicant gave to the police fitted that description was further proof of his guilt.

(b) The applicant

46. The applicant noted that since he was already detained in the framework of other criminal proceedings, the investigator had not had to bring new charges against him formally within a certain time-limit to secure his arrest. Therefore, the formal charge against the applicant was only brought after the prosecution had received from him all the statements that could secure his conviction by the court.

47. The applicant maintained that despite the fact that he was represented by a lawyer in other proceedings pending against him, he was denied legal advice in the proceedings concerning murder of Mrs K. The applicant noted that he had never waived his right to a lawyer and would not be allowed to do so under the law, when formally charged, given the possibility that he could receive a life sentence (see paragraph 26 above).

48. The applicant maintained that, being unrepresented, he had been confused about the consequences of a refusal to testify. Furthermore, the minutes of his interviews contained clear reference to criminal liability for refusal to testify, while the right to silence was mentioned by simple reference to the relevant provision of the Constitution, which could not serve as proof that this right had been properly explained to him.

49. The applicant noted that the denial of legal assistance at that stage affected the fairness of the proceedings in their totality, given that his

confessions served as the principle ground for his conviction. On the latter point, he contended that his confessions contained no details that were not already known to the police. Furthermore, there were no signs at the scene of crime which could confirm his presence there. The applicant noted that the forensic examination established that the injuries of the late Mrs K. could have been inflicted with any object with a cutting edge, while there was no evidence that the particular knife obtained by the police from the applicant had been used to kill Mrs K.

50. The applicant finally maintained that in addition to the above arguments, his confessions contradicted some other important pieces of evidence in the case (see paragraph 21 above).

2. Court's assessment

(a) General principles

51. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the complaints under those two provisions taken together (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, p. 711, § 49).

52. According to the Court's case-law, even if the primary purpose of Article 6, as far as criminal matters are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36). The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. The moment from which Article 6 applies in "criminal" matters also depends on the circumstances of the case, as the prominent place held in a democratic society by the right to a fair trial prompts the Court to prefer a "substantive", rather than a "formal", conception of the "charge" contemplated by Article 6 § 1. The Court is compelled to look behind the appearances and investigate the realities of the procedure in question (see *Deweert v. Belgium*, 27 February 1980, § 44, Series A no. 35).

53. The Court also reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). Furthermore, Article 6 may also be relevant before a case is sent for trial and in so far as the fairness of the trial is likely to be seriously prejudiced by

an initial failure to comply with it (see *Imbrioscia*, cited above, § 36; and *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-...). The manner in which Article 6 §§ 1 and 3 (c) are applied during the investigation depends on the special features of the proceedings and the facts of the case. Article 6 will normally require that the accused already be allowed to benefit from the assistance of a lawyer at the initial stages of police interrogation. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (*Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

54. The Court reiterates that its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46, and *Teixeira de Castro v. Portugal*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1462, § 34).

55. As regards the use of evidence obtained in breach of the right to silence and the privilege against self-incrimination, the Court recalls that these are generally recognised international standards which lie at the heart of the notion of a fair trial under Article 6. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see, *inter alia*, *Saunders v. the United Kingdom*, cited above § 68; *Heaney and McGuinness*, cited above, § 40; *J.B. v. Switzerland*, no. 31827/96, § 64, ECHR 2001-III; and *Allan*, cited above, § 44).

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

56. The Court will first assess the applicability of Article 6 to the period of investigation between 15 February 2002, when the applicant confessed to the murder of Mrs K., and 25 February 2002, when he was formally charged with this crime.

57. The Court notes that from the first interview of the applicant it became clear that he was not simply testifying about witnessing a crime but was actually confessing to committing one. From the moment the applicant first made his confession, it could not be said that the investigator did not

suspect the applicant's involvement in the murder. The existence of such a suspicion is confirmed by the fact that the investigator took further steps to check the credibility of the applicant's self-incriminating statements and conducted investigative procedures, such as an on-site reconstruction of the crime, which are usually conducted with suspects. In the Court's opinion, the applicant's position was significantly affected as soon as the suspicion against him was seriously investigated and the prosecution case compiled (see *X v. the United Kingdom*, no. 728/74, Commission decision of 11 May 1978, Decisions and Reports (DR) 14, p. 27). The Court therefore concludes that in the circumstances of the present case, Article 6 was applicable from 15 February 2002 when he confessed to the murder of Mrs K. and rejects the Government's preliminary objection.

58. The Court reiterates that in particular where a deprivation of liberty is at stake, the interests of justice in principle call for legal representation (see *Benham v. the United Kingdom*, no. 19380/92, § 61, 10 June 1996). Furthermore, the Court notes that Ukrainian legislation provides for obligatory legal representation of persons who could expect life imprisonment if convicted. This was the applicant's situation, in that he was already charged with a murder and being accused of the second murder made a sentence of life imprisonment a possibility (see paragraph 26 above). The Court considers that the legal representation of the applicant during the period in question was required in the interests of justice.

59. Furthermore, notwithstanding the Government's arguments that the applicant's right to silence was protected in domestic law and that there was no evidence that he was ill-treated in order to confess, the circumstances of the case suggest that his testimonies were obtained in defiance of his will. Although the applicant failed to substantiate any physical coercion by the investigators, the fact that another person within the same proceedings also confessed to the murder of Mrs K. and retracted his statement, alleging coercion by the same investigator, could raise reasonable doubts as to the practices of the investigator in the present case. In addition, the applicant, having been warned about criminal liability for refusal to testify and at the same time having been informed about his right not to testify against himself, could have been confused, as he alleged, about his liability for refusal to testify, especially in the absence of legal advice during that interview. It should be further noted that although the applicant had retracted his testimonies during the court hearings the domestic authorities based his conviction for the murder of Mrs K. to a decisive extent, if not solely, on these self-incriminating statements. The statements did not in fact contain any information which was not already known to the investigators (in contrast to the case of the kidnapping and murder of S., in which the applicant showed the police where the corpse had been hidden) and had been received in unclear circumstances and in clear violation of the applicant's right to defence.

60. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was denied a fair trial. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government maintained that there was no causal link between the non-pecuniary damage claimed and the violations alleged. Therefore, they considered that this claim should be rejected.

64. The Court notes that where an individual, as in the instant case, has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, a retrial, a reopening or a review of the case, if requested, represents in principle an appropriate way of redressing the violation (see, *Nadtochiy v. Ukraine*, no. 7460/03, § 55, 15 May 2008). Therefore, it considers that the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

65. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court.

66. The Government contended that this claim was not supported by any documents and that the applicant received legal aid from the Council of Europe. Therefore, in their opinion, this claim should be rejected.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the applicant's claim under this head.

C. Default interest

68. 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. *Joins to the merits* the Government's contention concerning the applicability of Article 6 to the questioning of the applicant as a witness between 15 and 25 February 2002;
2. *Declares* the complaints under Article 6 §§ 1 and 3 of the Convention that his conviction for the murder of Mrs K. was based on incriminating evidence obtained in violation of his right to remain silent and the privilege against self-incrimination and that he had been hindered in the effective exercise of his right to defence when questioned at the pre-trial stage of the proceedings concerning the murder of Mrs K. admissible and the remainder of the application inadmissible;
3. *Holds* that Article 6 of the Convention is applicable in the instant case and, consequently, *dismisses* the respondent Government's preliminary objection;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President