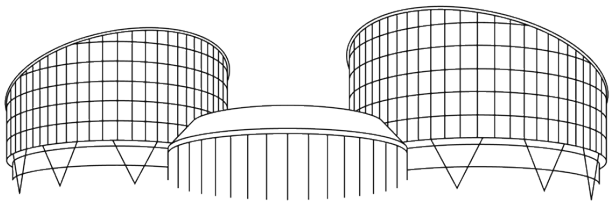

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PASKAL v. UKRAINE

(Application no. 24652/04)

JUDGMENT

STRASBOURG

15 September 2011

FINAL

15/12/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Paskal v. Ukraine,

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

Dean Spielmann, *President,*
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ann Power, *judges,*
Mykhaylo Buromenskiy, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 23 August 2011,

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

PROCEDURE

1. The case originated in an application (no. 24652/04) 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 Yuriy Mikhaylovich Paskal ("the applicant"), on 17 June 2004.

2. The applicant alleged, in particular, that his pre-trial detention had been unlawful and unreasonably long and that the criminal trial against him had been unfair and lengthy.

3. On 24 September 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. On 24 March 2010 the applicant was granted legal aid, however, Mr K. K. Sizarev, a lawyer practising in Yevpatoriya, appointed by the applicant as his representative, failed to submit any observations in response to those of the Government.

5. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

6. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Mr Mykhaylo Buromenskiy to sit as an ad hoc judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1966 and lives in Simferopol. In 1999 the applicant obtained a university degree in law and at the material time was serving as a police officer in Simferopol.

A. Criminal proceedings against the applicant

8. On 1 July 1999 the applicant was arrested on suspicion of having taken part in a robbery on 10 February 1999.

9. At 9:20 a.m. on 1 July 1999 the applicant signed a procedural rights notification form, having noted in it that he wished to appoint M. as his advocate.

10. At 9:25 a.m. on the same date the applicant was questioned, without a lawyer, about the robbery. During this questioning the applicant provided various personal details and stated that he had no knowledge of the robbery, as on the date at issue he was dividing his time between his professional duties as a police officer and his studies at law school. He also named witnesses on his behalf. The interview transcript started with the following paragraph, undersigned by the applicant in addition to his general signature under the document:

> "My rights have been explained to me under Article 63 of the Constitution of Ukraine, according to which I have a right to refuse to testify concerning myself. I wish to testify concerning the case at issue".

11. On 3 July 1999 the applicant, being questioned in the presence of M. (the advocate, mentioned by the applicant in his rights notification form), stated that he confirmed his testimony of 1 July 1999 and had nothing to add.

12. In the course of further investigation, the authorities increased the charges, eventually imputing to the applicant organisation of a gang and participation in over thirty robberies. The investigation questioned some 120 witnesses, carried out some twenty reconstructions of crime scenes and ordered numerous expert assessments.

13. On 20 July 2000 the pre-trial investigation was completed and the applicant, along with eighteen other individuals implicated in membership of his gang, was committed for trial to the Supreme Court of the Autonomous Republic of the Crimea (subsequently renamed the Court of Appeal of the Autonomous Republic of the Crimea, and hereafter "the ARC Court").

14. On 4 May 2001, following familiarisation of the defendants with the case file materials and completion of other procedural formalities, the ARC Court held a preliminary hearing in the case and scheduled the trial for 5 June 2001.

15. Having held some eighteen hearings between June and December 2001, the ARC Court adjourned the proceedings following a request by one of the defendants that the hearings be recorded, for which the technical means were not available at the time.

16. On 15 May 2002 the ARC Court resumed consideration of the case.

17. On 17 January 2003 the applicant complained in court that he had been tortured during the pre-trial investigations. Following an inquiry in respect of his complaint, on 5 February 2003 the Prosecutors' Office of the ARC refused to institute criminal proceedings against the police officers implicated by the applicant in his ill-treatment, for want of evidence of any such ill-treatment. According to the materials in the case file the applicant did not appeal against this decision.

18. On 29 January 2003 A.K., the applicant's co-defendant, complained that Judge Sh., presiding over the case, was not impartial. In particular, in the beginning of the trial she had given an interview to the *Flag Rodiny* newspaper, expressing an opinion about the defendants' guilt. A.K. presented a copy of the newspaper published on 29 June 2001, featuring the article entitled 'Changelings with police epaulettes'. In this article the Judge was, in particular, quoted as saying:

> "Most often it was the well-off residents of the Crimea or the Zaporizhzhya Region who were the victims of armed assaults ... The robbers acted cruelly and cold-heartedly, using any means to get the money. They acted as persons absolutely certain of their impunity. Such audacity ... I, frankly speaking, have never encountered during my eleven years of judicial practice. Yes, I am aware of occasions when criminals have used police uniforms for various criminal plots, however, those individuals had nothing to do with the law-enforcement bodies, unlike *Paskal* and his comrades, who managed to combine law-enforcement service with robbery. The defendants, I should say, admit their guilt in part, however, their conduct is extremely challenging. They constantly lodge absolutely unfounded requests for the removal of the judge and the prosecutor. I assume, however, that in the course of the hearings their arrogance will vanish. The hearings are likely to last a long time".

19. On the same date Judge Sh. addressed a letter to the Prosecutor of the ARC requesting that the circumstances of the publication be investigated. She maintained that the publication, which, in her opinion, could adversely influence the proceedings, was inaccurate, as she had never given the said interview to the newspaper.

20. Following Judge Sh.'s application, the Prosecutors' Office established that the *Flag Rodiny* newspaper belonged to the Black Sea Fleet of the Russian Federation in Sevastopol. A request was sent to the Military Prosecutors' Office of the Russian Federation to investigate the matter. According to the case file materials, there was no further follow-up.

21. Between 15 May 2002 and 22 May 2004 the ARC Court held some 150 hearings in the applicant's case.

22. On 17 November 2004 the ARC Court pronounced its judgment, which was presented on some 200 pages. The court convicted the applicant of being a member of a gang and of numerous counts of robbery, and sentenced him to fourteen and a half years' imprisonment. The court examined in detail and rejected the complaints by the applicant and his co-accused that they had been ill-treated by the investigative authorities.

23. On 22 December 2004 the applicant appealed in cassation, alleging that the trial court had erred in its assessment of the facts and application of the law and imposed a disproportionately heavy sentence on him.

24. On 15 August 2005 the applicant amended his initial appeal. He contended, in particular, that Judge Sh. was not impartial, since she had given an interview to the *Flag Rodiny* newspaper implying that the applicant was guilty long before the conviction had been pronounced. He also complained in general terms that his right to defence had been infringed, in particular as the trial court had not allowed him to be represented by several unnamed defenders and as the initial bill of indictment allegedly contained fewer charges than those examined by the court.

25. On 16 March 2006 the Supreme Court rejected the applicant's appeal, finding that the trial court had properly assessed the facts and applied the law to his case and that there were no procedural irregularities in the proceedings such as would prejudice the applicant's right to a fair trial. It likewise found that there was no evidence that the applicant had been ill-treated.

B. The applicant's detention before conviction

26. On 3 July 1999 the Prosecutors' Office of the ARC remanded the applicant in custody for ten days pending determination of the grounds for his indictment.

27. On 12 July 1999 the applicant was presented with a bill of indictment and his detention was extended until 1 September 1999. Subsequently, on several occasions the Prosecutors' Office of the ARC took decisions to extend the term of the applicant's detention, the reasoned texts of which, if any, have not been provided to the Court.

28. Initially the applicant was held in several Temporary Detention Centres (ITU), which were purportedly not suitable for long-term detention. Eventually, by May 2000 he was transferred to the Simferopol Pretrial Detention Centre (SIZO) no. 15, where he had allegedly no access to quality medical assistance, in particular to the services of a specialist in endocrinology.

29. On 7 April 2000 the Prosecutors' Office of the ARC extended the applicant's detention until 3 May 2000. According to the applicant, after this date and before the date of his conviction on 17 November 2004 his detention was not based on any formal decision. The applicant raised a relevant complaint before the Supreme Court of Ukraine in amendments to his cassation appeal and obtained no response.

30. According to the Government, on 4 May 2001 the ARC Court extended the applicant's detention for the period of the trial, finding that there were no reasons to release him and modify the custodial preventive measure in his respect. The Government did not provide a copy of this decision.

C. Civil proceedings against newspapers

31. On 7 June 2005 the applicant instituted civil proceedings against *Flag Rodiny* and several other newspapers and a local television company which had provided media coverage of the trial, complaining that they had portrayed him as a criminal before he had been finally convicted.

32. On 7 May 2007 the Kyivsky District Court of Simferopol rejected his claims, in particular, as lodged outside the one-year statute of limitations without any valid grounds for the delay.

33. On 5 March 2008 the ARC Court upheld this decision.

34. On 14 July 2008 the Supreme Court of Ukraine refused the applicant's request for leave to appeal in cassation.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of Articles 59 and 63 of the Constitution of Ukraine of 1996 concerning the right to legal assistance and the right not to incriminate oneself can be found in the judgment of 19 February 2009 in the case of *Shabelnik v. Ukraine* (no. 16404/03, § 25).

36. The relevant provisions of the Code of Criminal Procedure of Ukraine of 1960 concerning preventive measures pending trial are quoted in the judgment in the case of *Yeloyev v. Ukraine*, no. 17283/02, § 35, 6 November 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

37. The applicant complained under Article 5 of the Convention that his detention between 3 May 2000 and 17 November 2004 had been unlawful. The Court considers that this complaint falls to be examined under Article 5 § 1 (c), which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ..."

A. Admissibility

38. The Government did not submit any observations on the admissibility of this complaint.

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

B. Merits

40. The Government contended that the applicant was arrested and detained on the reasonable suspicion that he had committed a serious offence, and that his detention was lawful.

41. Examining the facts of the present case in light of its case-law (see *Yeloyev,* cited above*,* §§ 41-42), the Court observes that the Government did not provide any explanations as to the basis for the applicant's detention between 3 May 2000 (the date on which the term of detention extended by the Prosecutors' Office's on 7 April 2000 expired) and 4 May 2001 (the date of the preliminary hearing in the ARC Court). The Court therefore concludes that the applicant's detention during this period was not based on law.

42. As regards the basis for the applicant's detention in the period between 4 May 2001 and 17 November 2004 (the date on which the applicant's conviction by the trial court was pronounced), the parties disagree. According to the Government, this period was covered by a judicial order of 4 May 2001 (a copy of which has not been provided), in which the presiding judge found no reasons for the applicant's release and changing the custodial preventive measure imposed on him. According to the applicant, this period was not covered by any decision. The Court reiterates that in other judgments against Ukraine it has already found a breach of Article 5 § 1 (c) of the Convention whereby a judge extended an applicant's detention, when committing him or her for trial, for an unlimited period of time without giving express reasons for imposing such measure (see, for instance, *Kharchenko v. Ukraine*, no. 40107/02, §§ 73-76, 10 February 2011). In the light of this case-law, even assuming that the applicant's detention was, as required by the applicable domestic law, extended on 4 May 2001 as suggested by the Government, the Court considers that this decision was not lawful for the purposes of Article 5 § 1 (c) of the Convention.

43. Regard being had to its findings in paragraphs 41 and 42 above, the Court considers that the applicant's detention between 3 May 2000 and 17 November 2004 was not 'lawful' for the purposes of Article 5 § 1 (c) of the Convention.

44. There has therefore been a violation of Article 5 § 1 (c) of the Convention.

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

45. The applicant next complained that his pre-trial detention had been unjustifiably long. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

46. The Government did not submit any comments on the admissibility of this complaint.

47. The Court notes that the period to be taken into account commenced on 1 July 1999 (the date of the applicant's arrest) and ended on 17 November 2004 (the date when the applicant was convicted pursuant to the judgment of the first-instance court). It therefore lasted five years and

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

B. Merits

48. The Government contended that the charges against the applicant were very serious. They further noted that the case was exceptionally complicated. It involved nineteen defendants implicated in over thirty episodes of various crimes. During pre-trial investigation the authorities questioned eighteen victims and 120 witnesses, carried out twenty reconstructions of the crime scenes and ordered more than fifty various expert assessments, the total length of which was 726 days. At the trial stage seventy-seven witnesses and eight experts were questioned. Regard being had to the seriousness of the charges against the applicant and the risk that he would abscond or tamper with evidence and the complexity of the proceedings, the length of his detention was not unreasonable.

49. Having regard to the general principles established in its case-law (see *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, § 102; *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV; and *Iłowiecki v. Poland*, no. 27504/95, § 61, 4 October 2001), the Court notes that the period of the applicant's detention before conviction, which exceeded a five-year term, was particularly long. The Court accepts the Government's view that the charges against the applicant were very serious, as he was implicated in organising a gang and a number of armed robberies and other violent crimes. However, regard being had to the length of the period of the applicant's detention, the Court considers that the competent authorities must have also expressly adduced other reasons justifying holding him in custody during the entire period at issue. In the meantime, the Court is unable to assess the quality of the reasoning for the detention between 1 July 1999 and 3 May 2000, as it has not been provided with copies of the relevant decisions. As to the subsequent period, which ended on 17 November 2004, as noted in paragraphs 41 and 42 above, this period was at least partly not covered by any decision, and, to the extent it could have been covered by the decision of 4 May 2001, as appears from the Government's submissions, no express reasons for holding the applicant in custody were in any way advanced.

50. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

51. The applicant further complained under Article 6 § 1 of the Convention that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement.

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

52. The Government did not comment on the admissibility of this complaint.

53. The Court notes that in criminal matters the "reasonable time" referred to in Article 6 § 1 of the Convention begins to run as soon as a person is "charged", in other words, given the official notification by the competent authority of an allegation that he has committed a criminal offence. This definition also corresponds to the test whether "the situation of the [suspect] has been substantially affected". As regards the end of the "time", in criminal matters the period governed by Article 6 § 1 of the Convention covers the whole of the proceedings in issue, including appeal proceedings (see *Merit v. Ukraine*, no. 66561/01, § 70, 30 March 2004).

54. The period to be taken into account in the present case thus commenced in July 1999 (when the applicant was arrested) and finished on 16 March 2006 (the date of pronouncement of the final judgment by the Supreme Court of Ukraine). It therefore lasted six years and eight months at two levels of jurisdiction.

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

B. Merits

56. The Government alleged that the length of the proceedings was not unreasonable, regard being had to the exceptional complexity of the case. There were no unreasonable delays for which the authorities could be held responsible.

57. The Court observes that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other

authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

58. The Court would further state that for the entire period of the criminal proceedings the applicant in the present case was held in detention – a fact which required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see, for instance, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 83, ECHR 2003-IX, and *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006).

59. The Court appreciates that the criminal proceedings at issue, which concerned more than thirty counts of criminal activity on the part of nineteen individuals, were of particular complexity. It notes that the trial court held over 160 hearings within a three-year period and produced a judgment which was over 200 pages long.

60. On the other hand, the Court considers that these circumstances are not sufficient to justify the entire delay of more than six years in the resolution of the applicant's case. It is not for the Court to substitute its view for that of the domestic authorities in deciding whether or not all the investigative actions and hearings that took place were necessary and organised efficiently. At the same time, it notes that there were some delays in the proceedings, which remained unexplained by the Government in their observations. These included the nine-month delay between the completion of the investigation on 20 July 2000 and the first preparatory hearing of the case on 4 May 2001; the five-month delay in the organisation of technical recordings of the hearings (between December 2001 and May 2002); and the six-month delay between the last hearing in the first-instance court on 22 May 2004 and the pronouncement of the judgment on 17 November 2004.

61. Having examined all the material submitted to it, the Court is unable to conclude that the authorities handled the applicant's case with the requisite diligence. The Court considers that in the instant case the length of the criminal proceedings against the applicant was excessive and failed to meet the "reasonable time" requirement.

62. There has accordingly been a breach of Article 6 § 1 of the Convention.

IV. ALLEGED LACK OF IMPARTIALITY OF THE TRIAL COURT AND BREACH OF PRESUMPTION OF INNOCENCE

63. The applicant further complained about the publication of an interview with Judge Sh. in the *Flag Rodiny* newspaper. He noted that, firstly, this publication evidenced that Judge Sh. was not impartial. In addition, the publication breached his right to be presumed innocent. The applicant referred to Article 6 §§ 1 and 2 in respect of this complaint. The provisions at issue, in so far as relevant, read 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. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

..."

A. Admissibility

64. The Government submitted that the applicant did not exhaust domestic remedies with respect to his complaint about breach of his right to be presumed innocent. In particular, he could have requested removal of Judge Sh. from the trial proceedings and could have instituted separate civil proceedings alleging violation of his rights. While in June 2005 the applicant did institute civil proceedings against the newspaper, his complaints, lodged out of time, were properly rejected by the courts.

65. Alternatively, the Government claimed that this aspect of the application was lodged outside the six-month time-limit. The applicant should have learned about the *Flag Rodiny* publication no later than 29 January 2003, when his co-defendant demanded that its content be examined in the court hearings. Assuming the applicant considered that there were no effective remedies for his complaint, he should have lodged an application with the Court within six months of learning about the article.

66. The Court reiterates that the applicant complained in detail about the *Flag Rodiny* article in his appeal against the judgment of 17 November 2004. It considers that regard being had to the nature of his complaint, this remedy constituted exhaustion and that the six-month time-limit should be calculated from the date of the pronouncement of the final judgment in the case (see *Shagin v. Ukraine*, no. 20437/05, §§ 71-73 and 75, 10 December 2009). The Court therefore dismisses the Government's objections.

67. The Court notes that the applicant's complaints about lack of impartiality of Judge Sh. and breach of his right to presumption of innocence are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged lack of impartiality of Judge Sh.

68. The Government contended that Judge Sh. had not given an interview to the *Flag Rodiny* newspaper, and that she had informed the

applicant of this during the trial proceedings. Once A.K. demanded examination of the article at the hearings, she immediately requested the Prosecutors' Office of the ARC to investigate the situation. As the newspaper belonged to the Russian Federation's Black Sea Fleet, the Prosecutors' Office of the ARC, in its turn, requested cooperation from its Russian counterpart. The State authorities have therefore done what could be reasonably expected of them by way of a response to the situation in issue. The fact that they never received a response from the Russian Prosecutors' Office could not be held against them.

69. Examining the facts of the present case in light of its case-law (see, for instance, *Lavents v. Latvia*, no. 58442/00, §§ 117-118, 28 November 2002, and *Mironenko and Martenko v. Ukraine*, no. 4785/02, §§ 66-67 and 69-70, 10 December 2009), the Court considers that the wording of the interview allegedly given by Judge Sh. to the *Flag Rodiny* newspaper in the first weeks of the applicant's trial (see paragraph 18 above), created a strong indication that the interviewee was convinced of the applicant's guilt. The Court notes that the Judge denied ever giving the interview to the newspaper and attempted to distance herself from the publication in issue by requesting the intervention of the Prosecutors' Office. However, as there was no effective follow-up to her request, the origins of the publication were never clarified and the appearance of the Judge's partiality was not removed. Furthermore, the Supreme Court never reflected in its judgment on the reasons for dismissing the applicant's explicit complaint raised in his appeal on the subject of Judge Sh.'s lack of impartiality.

70. The Court finds that in these circumstances the appearance remains that Judge Sh. unambiguously expressed an opinion about the applicant's guilt at the very beginning of the trial. Therefore, in the Court's view, the applicant's fears that Judge Sh. lacked impartiality can be held to be objectively justified.

71. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Alleged breach of the presumption of innocence

72. The Government maintained that the publication in the *Flag Rodiny* newspaper could not be considered as breaching the applicant's presumption of innocence.

73. The Court notes that the nature of the statements attributed by the newspaper to Judge Sh. was at the heart of the reasoning for the conclusion that the applicant had not had a fair trial by an impartial tribunal (see paragraphs 69-71 above). Therefore, the Court does not find it necessary to examine this issue separately under this head.

V. ALLEGED BREACH OF RIGHT TO LEGAL ASSISTANCE

74. The applicant further complained that he had had no access to a lawyer at the initial stage of the proceedings. He cited Article 6 § 3 (c) of the Convention, which reads as follows:

> "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;
>
> ..."

75. By way of comment on this complaint the Government noted that the applicant was questioned without a lawyer on 1 July 1999 of his own free will, and gave statements which were not self-incriminating. Having obtained access to a lawyer by 3 July 1999, he confirmed his earlier testimony. Moreover, regard being had to the applicant's educational and professional background as a lawyer and a police officer, his participation in the questioning on 1 July 1999 was rather well-informed and deliberate.

76. The Court remarks that upon his arrest on 1 July 1999, the applicant was questioned without a lawyer just minutes after he had explicitly expressed the wish to appoint M. as his legal representative. In a number of its judgments the Court, being mindful of the vulnerable position of a suspect *vis-à-vis* the investigative authorities, has emphasised the paramount importance of access to a lawyer before the first questioning as a means to counter the power imbalance between the parties (see, among other authorities, *Salduz v. Turkey* [GC], no. 36391/02, §§ 50-55 and 58, 27 November 2008 and *Leonid Lazarenko v. Ukraine*, no. 22313/04, §§ 48-52, 28 October 2010). It has noted, in particular, that 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 (see *Salduz*, cited above, § 55). Likewise, the very fact of restricting access of a detained suspect to a lawyer may prejudice the rights of the defence even where no incriminating statements were obtained as a result (see e.g. *Dayanan v. Turkey*, no. 7377/03, §§ 32-33, 13 October 2009). On the other hand, neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial, as long as a waiver of the right is given in an unequivocal manner and was attended by minimum safeguards commensurate to its importance (see *Salduz,* cited above, § 59).

77. As regards the facts of the present case, the Court notes that, after notifying the investigation about his wish to be represented by a particular

lawyer, the applicant also signed an express waiver of his right to remain silent with respect to his questioning of 1 July 1999 and asserted his wish to speak about his alleged involvement in the case. In examining to what extent the authorities' reliance on this waiver for proceeding with the applicant's questioning was compatible with the Convention, the Court must analyse whether it constituted an act of the applicant's free will and informed procedural choice.

78. In this respect the Court takes note that the applicant was a policeman and a lawyer himself. While this fact may not mean that he was not vulnerable or in need of an advocate's support in his procedural capacity as a suspect, the level of the applicant's expertise cannot be discounted in assessing whether his consent to participate in the particular questioning was well-informed. Further, the applicant's testimony given on 1 July 1999 was not only free from self-incriminating statements, but also fully endorsed by him two days after the questioning in issue, when he obtained access to the lawyer he initially intended to hire (see paragraph 11 above). It can therefore neither be concluded that the applicant was coerced to give any statement in defiance of his will, nor that his initial statements were detrimental to the advocate's further defence strategy.

79. The Court considers that the very fact of questioning a suspect without enabling him to consult a lawyer may shift the power balance between the parties in breach of the fair trial guarantees even absent any appearance of negative consequences for the outcome of the proceedings. However, it is notable that the applicant in the present case did not expound in any detail on the nature of his sufferings in connection with his questioning on 1 July 1999. Moreover, the applicant does not appear to have ever raised the matter during his trial and, while complaining in his cassation appeal in general terms that his right to defence had been breached, he made no express mention of the above questioning. Instead, he alleged, in particular, that the trial court had refused to admit certain (unspecified) individuals as his defenders and that charges against him had been amended during trial. In the absence of any plea concerning non-exhaustion on the Government's part, the Court will normally assume that the applicant duly exhausted the available domestic remedies (see *Dobrev v. Bulgaria*, no. 55389/00, §§ 112-114, 10 August 2006). However, absent the applicant's investment in soliciting the domestic authorities' reaction to the fact of his questioning without a lawyer and his failure to provide more detailed submissions to the Court concerning the reasons why he offered himself for such a questioning, in context of the present case the Court is unable to draw an inference that the applicant was pressured in this respect.

80. Regard being had to the vague and general nature of the applicant's submissions concerning the circumstances and reasons for his participation in the questioning without a lawyer on 1 July 1999, the Court finds that the

present complaint is manifestly ill-founded and dismisses it in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. The applicant also complained under Article 3 of the Convention that he had been ill-treated by the investigative authorities in order to obtain a confession, that the conditions of his detention in the ITU from 1999 to 2000 were degrading, and that he did not receive medical assistance while in detention.

82. He further complained under Article 5 § 3 of the Convention that he had not been brought before a judicial officer to determine the lawfulness of his arrest and detention in July 1999 and under Article 5 § 4 of the Convention that he had not been able to challenge his detention in court.

83. The applicant likewise complained under Article 6 §§ 1 and 2 of the Convention that wide media coverage of the proceedings was allowed; that the media had infringed his right to be presumed innocent in covering the criminal proceedings; and that his civil proceedings against the newspapers and the television were both conducted unfairly and too long.

84. The applicant also complained under Article 6 § 3 (a, b and c) of the Convention that he had not been promptly informed of the nature of the accusations against him, that he had not had sufficient time and facilities to prepare his defence, and that he had not been provided with an advocate during unspecified periods, when he needed one.

85. The applicant also complained under Article 13 of the Convention that he had been unable to find a trustworthy and professional advocate, as they all lacked expertise and collaborated with the investigation.

86. Finally, the applicant cited Article 17 of the Convention in respect of the facts of the present case.

87. In the light of all the material before it, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the provisions relied upon by the applicant.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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."

90. The applicant did not submit a claim for just satisfaction within the period allocated by the Court for this purpose. Accordingly, the Court considers that there is no call to give any award under this head.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints concerning the lawfulness of the applicant's detention between 3 May 2000 and 17 November 2004, the length of his detention before conviction, length of the criminal proceedings, lack of impartiality of the trial court and breach of the presumption of innocence admissible;

2. *Declares* by a majority the remainder of the application inadmissible;

3. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;

6. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of lack of impartiality of the trial court; and

7. *Holds* unanimously that it is not necessary to examine separately the applicant's complaint under Article 6 § 2 of the Convention.

Done in English, and notified in writing on 15 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President