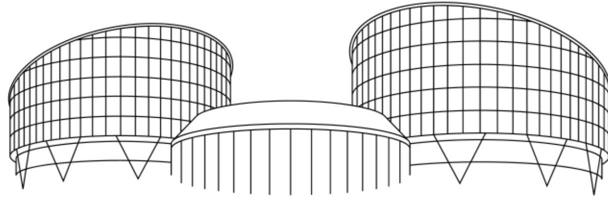

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF TAXQUET v. BELGIUM

(Application no. 926/05)

JUDGMENT

STRASBOURG

16 November 2010

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

In the case of Taxquet v. Belgium,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President,*
Christos Rozakis,
Nicolas Bratza,
Peer Lorenzen,
Françoise Tulkens,
Josep Casadevall,
Boštjan M. Zupančič,
Nina Vajić,
Anatoly Kovler,
Elisabet Fura,
Sverre Erik Jebens,
Isabelle Berro-Lefèvre,
Päivi Hirvelä,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Nona Tsotsoria,
Zdravka Kalaydjieva, *judges*,
and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 21 October 2009 and on 26 May and 6 October 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 926/05) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Belgian national, Mr Richard Taxquet (“the applicant”), on 14 December 2004.

2. The applicant was represented by Mr L. Misson and Mr J. Pierre, lawyers practising in Liège. The Belgian Government (“the Government”) were represented by their Agents, Mr M. Tysebaert, Senior Adviser, Federal Justice Department, and Mr A. Hoefmans.

3. The applicant alleged, in particular, a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the lack of reasons given in the Assize Court's judgment in his case and the impossibility of examining or having examined an anonymous witness.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court), composed of the following: Ireneu Cabral Barreto, Françoise Tulkens, Vladimiro Zagrebelsky, Danutė Jočienė, Dragoljub Popović, András Sajó and Işıl Karakaş, judges, and also Sally Dollé, Section Registrar. On 13 January 2009 the Chamber delivered a judgment in which it held unanimously that the complaints under Article 6 §§ 1 and 3 (d) were admissible and that there had been a violation of both provisions.

5. On 5 June 2009, following a request by the Government dated 8 April 2009, the panel of the Grand Chamber decided to refer the case to the Grand Chamber under Article 43 of the Convention.

6. The composition of the Grand Chamber was determined in accordance with the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The applicant and the Government each filed written observations. In addition, third-party comments were received from the United Kingdom, Irish and French Governments, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 21 October 2009 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr A. HOEFMANS, *Agent*,
Mr K. LEMMENS, *Counsel*;

(b) *for the applicant*
Mr L. MISSON,
Mr J. PIERRE, *Counsel*,
Mr R. TAXQUET, *applicant*.

The Court heard addresses by Mr Misson, Mr Pierre and Mr Lemmens and their replies to questions put by its members.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

10. On 17 October 2003 the applicant appeared before the Liège Assize Court, together with seven co-defendants, on charges of murdering an honorary minister (*ministre d'Etat*), A.C., and attempting to murder the latter's partner, M.-H.J. According to the wording of the indictment, they were charged with the following offences, committed in Liège on 18 July 1991:

> "as principals or joint principals,
>
> either through having perpetrated the offences or having directly cooperated in their perpetration,
>
> or through having, by any act whatsoever, lent such assistance to their perpetration that without it the offences could not have been committed,
>
> or through having, by gifts, promises, threats, abuse of authority or power, scheming or contrivance, directly incited another to commit the offences,
>
> or through having, by means of speeches in a public place or assembly, or by means of any written or printed matter, image or emblem displayed, distributed or sold, offered for sale or exhibited in a place where it could be seen by the public, directly incited another to commit the offences,
>
> 1. having knowingly and intentionally killed [A.C.], with the additional circumstance that the killing was premeditated, an offence classified by law as premeditated murder (*assassinat*);
>
> 2. having attempted, knowingly, intentionally and with premeditation, to kill [M.-H.J.], the intent to commit the offence having been manifested by conduct which objectively constituted the first step towards perpetration of the offence and which was halted or failed to attain the aim pursued only as a result of circumstances outside the control of the perpetrators, an offence classified by law as attempted premeditated murder."

11. Only one of the co-defendants filed a statement of defence. The applicant alleged that it was impossible for him to do so since he had no knowledge of the evidence against him.

12. The indictment of 12 August 2003 stated, *inter alia*, that in June 1996 a person described by the applicant as an anonymous witness had passed on certain information to the investigators. A record of 3 September 1996 noted the informer's wish to remain anonymous, based on fears for his safety "in view of the importance of his information and the media outcry that has always surrounded the C. case". The person was never interviewed by the investigating judge. He had given the investigators information obtained in confidence from a person whose identity he refused to disclose. During the trial in the Assize Court, questions were put to the investigators on the initiative of several of the defendants about the informer's identity. The investigators stated that their informer was not one of the defendants and had not personally witnessed the alleged offences. According to the

information supplied, which was set out in fifteen points, A.C.'s murder had been planned by six people, including the applicant and another leading politician. The passage incriminating the applicant stated:

> “V. der B. and Taxquet were said to have been particularly insistent about the urgent need to kill C. before the '91 holidays as he had promised to make some significant disclosures after the summer break.”

13. On account of the numerous applications made during the trial, the Assize Court delivered thirteen interlocutory judgments:

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

(2) judgment of 20 October 2003 on an application to have a confrontation between witnesses declared null and void;

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

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

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

(6) judgment of 13 November 2003 refusing an application by the prosecution for a hearing to be held in camera;

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

(8) judgment of 18 December 2003 on an application by a co-defendant for the examination of certain witnesses;

(9) judgment of 18 December 2003 on the use of recordings of a confrontation between witnesses;

(10) judgment of 18 December 2003 on an application by the civil parties for the examination of witnesses who had failed to appear and the re-examination of other witnesses;

(11) judgment of 18 December 2003 on an application by a co-defendant for the examination or re-examination of the anonymous witness;

(12) judgment of 18 December 2003 on the applicant's submissions as to the examination of witnesses who had failed to appear and the re-examination of other witnesses;

(13) judgment of 18 December 2003 on an application by the applicant for the examination or re-examination of the anonymous witness.

14. In the last-mentioned judgment, concerning the application for an investigating judge to hear or rehear evidence from the person who had anonymously supplied information noted down by two non-commissioned gendarmerie officers, the Assize Court held:

> “This information, obtained anonymously by members of the police force, has no probative value as such. Accordingly, in the present case it simply constituted information capable of giving fresh impetus or a new slant to the investigation and enabling lawful evidence to be gathered independently.

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

They also noted that some of the information supplied by their informer, relating in particular to other politicians mentioned in the submissions by counsel for Richard Taxquet ..., could not be corroborated by any evidence, despite their inquiries.

...

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

...

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

With regard to the application for an examination of that person, firstly, the court is unaware of his identity and, secondly, regardless of the considerations referred to by the judicial investigating bodies in that connection, such an examination does not appear useful for establishing the truth and would delay the proceedings needlessly without giving cause to hope for more certain results.”

15. The jury was asked to answer thirty-two questions put to it by the President of the Assize Court. Four of them concerned the applicant and were worded as follows:

“**Question 25 – PRINCIPAL COUNT**

Is the accused Richard Taxquet, who is present in court, guilty,

as principal or joint principal,

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

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

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

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

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

Question 26 – AGGRAVATING CIRCUMSTANCE

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

Question 27 – PRINCIPAL COUNT

Is the accused Richard Taxquet, who is present in court, guilty,

as principal or joint principal,

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

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

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

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

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

Question 28 – AGGRAVATING CIRCUMSTANCE

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

16. The jury answered "yes" to all four questions.

17. On 7 January 2004 the Assize Court sentenced the applicant to twenty years' imprisonment.

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

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

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

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

– in refusing, on the ground that such a step might delay the proceedings needlessly, to show the film of the confrontation between some of the defendants and certain Tunisian nationals against whom charges had been brought, the Assize Court had not breached the rights of the defence or the principle that hearings must be conducted orally, since the refusal had been based on the fact that those taking part in the confrontation, having appeared at the trial, had been directly confronted with the defendants;

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

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

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

– the procedure for appointing members of the jury and the fact that they reached their verdict as to guilt without having discussed the issue with the court did not mean that the Assize Court was not an independent and impartial tribunal established by law within the meaning of Article 6 § 1 of the Convention or that the presumption of the accused's innocence could not be lawfully rebutted in that court;

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

– neither Article 6 §§ 1 and 3 (b) of the Convention nor Article 14 § 3 (b) of the International Covenant on Civil and Political Rights, nor Article 149 of the Constitution, even when read in conjunction with the above-

mentioned treaty provisions, placed any obligation on a jury to give reasons for its answers;

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

– Articles 10 and 11 of the Constitution, Article 14 of the International Covenant on Civil and Political Rights and Article 6 § 1 of the Convention did not lay down a requirement for reasons to be given for a verdict as to guilt, or the right of appeal or the right to appear before courts made up solely of professional judges; the discretion of the lay jury, which, moreover, was circumscribed by Articles 351, 352, 364 and 364 *bis* of the Code of Criminal Procedure, did not give rise to an arbitrary difference in treatment for the purposes of Article 14 of the Convention between those being tried by assize courts and those being tried by other criminal courts.

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

> "In so far as they challenge the observation that the Assize Court was unaware of the identity of the person whose examination was being requested and could therefore not order it, these grounds of appeal, being directed against an *obiter dictum*, are immaterial.
>
> On that account, they are inadmissible.
>
> As to the remaining arguments, the presence in the criminal case file of a record containing information from an unidentified source does not require the trial court, as a condition for the validity or admissibility of the prosecution, to ensure that the informer is identified and examined in accordance with the procedure set forth in Articles 189 *bis* and 315 *bis* of the Code of Criminal Procedure. Those provisions leave it open to the trial court to appoint an investigating judge to that end if such a step appears useful for establishing the truth.
>
> The judgments take the view, on the basis of a factual assessment which this court is not empowered to overrule, that the examination sought would delay the proceedings needlessly without giving cause to hope for more certain results.
>
> The judgments also observe that the information obtained anonymously did not correspond to the evidence obtained lawfully and independently against the defendants.
>
> It does not appear from the Assize Court's reply to the appellants' submissions that the trial court contested their right to rebut the evidence produced at the trial.
>
> On that account, these grounds of appeal cannot be allowed.

> As to the remaining argument, Article 6 § 3 (d) of the Convention ... is not breached by the mere fact that the trial court considered it unnecessary or impossible to order the cross-examination of the anonymous informer whose disclosures provided helpful guidance for the investigation.
>
> On that account, these grounds of appeal have no basis in law."

21. In the *Questions à la Une* programme broadcast by Radio-Télévision Belge Francophone (the State broadcaster for the French-speaking part of Belgium) in early 2006, one of the applicant's co-defendants, S.N., stated that he had been the anonymous informer and had acted as a "middleman" on behalf of another co-defendant, D.C., whose accusations he had relayed. During the same programme, the identity of the anonymous witness was confirmed by the Minister of Justice at the time of the events. S.N. said that he had received the sum of 3,000,000 Belgian francs (BEF – 74,368.06 euros (EUR)) from the Belgian State as "middleman's commission". D.C. had allegedly received BEF 5,000,000 (EUR 123,946.76).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The institution of the jury and the Assize Court

22. Following the 1789 French Revolution, the jury featured in the 1791 French Constitution and the 1808 Code of Criminal Procedure. At that time, Belgium was part of French territory. When it was separated from France and attached to Holland, the jury was abolished but assize courts continued to exist. When Belgium gained independence, the institution of the jury was enshrined in the Constitution of 7 February 1831, Article 98 of which provided: "The jury shall be constituted for all serious crimes and for political and press offences." The institution was envisaged by the framers of the Constitution as the touchstone of the authenticity of any democratic demand. The jury was seen above all as a political affirmation of the freedom won by the people, the symbol of the people's sovereignty. It was instituted by the Decree of 19 July 1831; membership was initially based on function (*jury capacitaire*) and subsequently, from 1869, on property (*jury censitaire*). By virtue of a Law of 21 December 1930, a new reform made the composition of the jury more democratic and representative of all social classes, the result being the twelve-member lay jury that still exists today.

B. The Constitution

23. Article 150 of the Consolidated Constitution of 17 February 1994 provides: "The jury shall be constituted for all serious crimes and for

political and press offences, except for press offences motivated by racism or xenophobia" (text as amended on 7 May 1999).

24. Furthermore, Article 149 provides: "All judgments shall contain reasons; they shall be delivered in public."

C. Procedure in the Assize Court

1. Safeguards afforded by the Code of Criminal Procedure (as in force at the material time)

25. Proceedings in assize courts in Belgium afford a number of safeguards, particularly as regards the defence rights of the accused.

26. Article 241 of the Code of Criminal Procedure (CCP) requires the Principal Public Prosecutor to draw up an indictment indicating the nature of the offence forming the basis of the charge, and any circumstances that may cause the sentence to be increased or reduced. Pursuant to Article 313 of the CCP, the Principal Public Prosecutor must read out the indictment and the defendant or his counsel the statement of defence. Article 337 states that the questions put to the jury must derive from the indictment (which itself must be consistent with the judgment committing the accused for trial – Article 271 of the CCP) and must comply with certain formal requirements; for example, questions that are complex or concern points of law are prohibited.

27. At the close of the oral proceedings, questions are put to the jury in order to establish the factual circumstances of the case and any particular factors likely to lead to the precise determination of whether or not the accused is guilty as charged. The president of the Assize Court is empowered to put questions to the jury on all the circumstances which might have an influence on the facts which served as the basis for the indictment, provided that these circumstances were discussed during the oral proceedings. The principal question concerns the constituent elements of the offence, while there must be a separate question in respect of each count. Separate questions regarding other facts, such as aggravating circumstances or the existence of any justification or mitigating factor, may also be put. The prosecution and the accused can challenge the questions and have the opportunity to ask the president to put one or more additional questions to the jury. In the event of dispute regarding the questions, the Assize Court must decide by a reasoned judgment.

28. Article 341 provides that after asking the questions, the president hands them to the jury; at the same time, he hands over the indictment, the reports establishing the offence and the documents in the file other than the written witness statements.

29. In accordance with Article 342, once the questions have been put to and handed to the members of the jury, they retire to deliberate in private.

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

30. Article 343 authorises members of the jury to leave the deliberation room only when they have arrived at their verdict.

31. Lastly, Article 352 provides that if the judges are unanimously persuaded that the jurors, while complying with the procedural requirements, have made a substantive error, the court must stay the proceedings and adjourn the case until the following session for consideration by a new jury, which cannot include any of the original members. However, according to information supplied by the Government, this option has been used on only three occasions.

2. *Case-law of the Court of Cassation*

32. The Chamber judgment of 13 January 2009 has had repercussions on the case-law of the Belgian courts.

33. In judgment no. 2505 (P.09.0547.F) of 10 June 2009 the Court of Cassation held:

> “As to the ground of appeal, raised *proprio motu*, alleging a violation of Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms:
>
> According to a judgment of 13 January 2009 of the European Court of Human Rights in the case of *R.T. v. the Kingdom of Belgium*, the right to a fair trial guaranteed by Article 6 § 1 of the Convention implies, where the Assize Court is concerned, that the decision on a criminal charge should highlight the considerations that have persuaded the jury of the accused's guilt or innocence and should indicate the precise reasons why each of the questions has been answered in the affirmative or the negative.
>
> On account of the binding effect of interpretation now attaching to that judgment and the prevalence over domestic law of the international legal rule deriving from a treaty ratified by Belgium, the court is compelled to reject the application of

Articles 342 and 348 of the Code of Criminal Procedure in so far as they lay down the rule, now criticised by the European Court, that the jury's verdict does not contain reasons.

It appears from the documents to which the court may have regard, in particular the indictment, that during the preliminary investigation the appellant, who was prosecuted for murder as the principal or joint principal, provided explanations, as to the acts of which he was accused, which were rebutted by a witness whose identity was kept secret under Articles 86 *bis* and 86 *ter* of the Code of Criminal Procedure.

In submissions filed with the Assize Court at the hearing on 18 February 2009 the appellant requested that the verdict contain reasons so that, in the event of his conviction, he could understand the grounds that had persuaded the jury to find him guilty, and so that the Court of Cassation could review the lawfulness of the verdict.

With regard to the charge of murder against the appellant, the jury was asked to answer a principal question about his involvement in committing intentional homicide, an additional question on the statutory defence of provocation and two questions, in the alternative, on the offence provided for in Article 401 of the Criminal Code. The jury answered the first question in the affirmative and the second in the negative, leaving the other questions unanswered.

The judgment appealed against sentenced the appellant to eighteen years' imprisonment for murder, on the basis of the verdict expressed solely by answers in the affirmative or the negative to the questions put in accordance with the law. The judgment states that there is no need to give any further reasons for the finding of guilt, on the ground that the precision of the questions adequately offsets the brevity of the decision.

However, the bare statement that the appellant is guilty of murder and that there are no mitigating factors does not disclose the precise reasons why the charge, which the appellant denied, was found to have been made out, and does not enable this court to review, *inter alia*, whether the conviction was based to a decisive extent on the deposition by an anonymous witness incriminating the accused or was supported by other corroborating evidence in accordance with Article 341, paragraph 3, of the Code of Criminal Procedure.

While conforming to Belgian law, which does not require jurors to account for how they reached their personal conviction, the decision is contrary to Article 6 of the Convention in so far as that provision may be construed as meaning that the right to a fair trial encompasses a statement of reasons for the verdict."

34. Other judgments to similar effect have subsequently been delivered.

3. Legislative reform

35. In Belgium, even before the Chamber judgment in the *Taxquet* case, a Bill of 25 September 2008 that sought, among other things, to allow the president of the Assize Court to be present during the jury's deliberations in order to assist its members was considered by the Senate. The proposed version of Article 350 of the CCP stated that the Assize Court should give

reasons for its decision as to guilt, but was not required to address the parties' submissions.

36. The Assize Court Reform Act of 21 December 2009, which was published in the *Moniteur belge* on 11 January 2010 and came into force on 21 January 2010, has introduced a requirement for the Assize Court to state the main reasons for its verdict. The relevant provisions of the CCP now read as follows:

Article 327

"Once the questions have been put and handed to the jurors, they shall retire to the deliberation room to deliberate.

The foreman is either the first member of the jury drawn by lot or is appointed by the jury with his or her consent.

Before the deliberations begin, the foreman 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 provides that the accused may be convicted only if it is apparent from the evidence admitted that he is guilty beyond reasonable doubt of the offence with which he is charged.'"

Article 328

"The members of the jury may leave the deliberation room only when they have reached their verdict.

No one may enter while they are deliberating, for any reason whatsoever, without the written authority of the president. The president may enter the room only if he is called by the foreman, in particular to answer questions of law, and is accompanied by his fellow judges, the accused and his counsel, the civil party and his counsel, the prosecution and the registrar. A reference to the incident shall be made in the record.

..."

Article 334

"The court and the members of the jury shall then immediately retire to the deliberation room.

Without having to address all the submissions filed, they shall formulate the principal reasons for their decision.

The decision shall be signed by the president, the foreman of the jury and the registrar."

D. Provisions of the Criminal Code

37. The relevant Articles of the Criminal Code provide as follows:

Article 51

"A criminal attempt is made out where the intent to commit a serious crime (*crime*) or other major offence (*délit*) has been manifested by conduct which objectively constituted the first step towards perpetration of the offence in question and which was halted or failed to attain the aim pursued only as a result of circumstances outside the control of the perpetrator."

Article 66

"The following shall be punished as perpetrators of a serious crime or other major offence:

Those who have perpetrated the offence or have directly cooperated in its perpetration;

Those who have, by any act whatsoever, lent such assistance to its perpetration that without it the offence could not have been committed;

Those who have, by gifts, promises, threats, abuse of authority or power, scheming or contrivance, directly incited another to commit the offence;

Those who have, by means of speeches in a public place or assembly, or by means of any written or printed matter, image or emblem displayed, distributed or sold, offered for sale or exhibited in a place where it can be seen by the public, directly incited another to commit the offence, without prejudice to the penalties provided for by the law against those who incite others to commit offences, even where such incitement has no effect."

Article 67

"The following shall be punished as accessories to a serious crime or other major offence:

Those who have given instructions for its commission;

Those who have procured weapons, implements or any other means used to commit the offence, knowing that they were intended for that purpose;

Those who have, save in the case provided for in paragraph 3 of Article 66, knowingly aided or abetted the principal or principals in acts preparatory to or facilitating the commission of the offence or in its completion."

Article 393

"Homicide committed with intent to kill shall be classified as murder (*meurtre*). It shall be punishable (by twenty to thirty years' imprisonment)."

Article 394

"Murder committed with premeditation shall be classified as premeditated murder (*assassinat*). It shall be punishable (by life imprisonment)."

E. Law of 1 April 2007 amending the Code of Criminal Procedure to allow the reopening of criminal proceedings

38. The Law of 1 April 2007 (which was published in the *Moniteur belge* on 9 May 2007 and came into force on 1 December 2007) entitles convicted persons to seek the reopening of their trial following a finding by the European Court of Human Rights of a violation of the Convention.

39. Article 442 *bis* of the CCP provides:

"If a final judgment of the European Court of Human Rights has found that there has been a breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms or the Protocols thereto (hereinafter 'the European Convention'), an application may be made for the reopening – in respect of criminal matters alone – of the proceedings that resulted in the applicant's conviction in the case before the European Court of Human Rights or in the conviction of another person for the same offence on the basis of the same evidence."

40. Article 442 *ter* of the Code provides:

"The following shall be entitled to apply for the reopening of the proceedings:

(1) the convicted person;

(2) if the convicted person has died, has been deprived of legal capacity or has been declared untraceable, the person's spouse, lawful cohabitee, descendants, brothers and sisters;

(3) the Principal Public Prosecutor at the Court of Cassation, of his own motion or at the instigation of the Minister of Justice."

41. Article 442 *quinquies* of the CCP provides:

"Where it appears from consideration of the application either that the impugned decision is in breach of the European Convention on the merits or that the violation found is the result of procedural errors or shortcomings of such gravity as to cast serious doubt on the outcome of the proceedings in issue, the Court of Cassation shall order the reopening of the proceedings, provided that the convicted person or the entitled persons under Article 442 *ter*, point (2), continue to suffer very serious adverse consequences which cannot be redressed other than by reopening the trial."

42. Following the Court's judgment in *Da Luz Domingues Ferreira v. Belgium* (no. 50049/99, 24 May 2007), the Court of Cassation, in a

judgment of 9 April 2008, ordered the reopening of the proceedings and withdrew the judgment it had delivered on 6 January 1999 (*Journal des tribunaux*, 2008, p. 403).

III. COMPARATIVE LAW

43. It is clear that there are many different models of lay adjudication in the member States of the Council of Europe. There are variations reflecting cultural and historical particularities even among countries that have opted for the "traditional" trial-by-jury model, the defining feature of which is that professional judges are unable to take part in the jurors' deliberations on the verdict.

44. The member States may be divided into three categories: those without any form of jury trial or any model of lay adjudication in criminal matters; those using a collaborative court model of lay adjudicators sitting and deliberating alongside professional judges in criminal matters; and those which have opted for the "traditional" jury model in criminal matters.

45. Among the models examined, fourteen Council of Europe member States have never had a jury system or any other form of lay adjudication in criminal matters or have abolished it: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Latvia, Lithuania, Luxembourg, Moldova, the Netherlands, Romania, San Marino and Turkey. In these States criminal courts are composed exclusively of professional judges.

46. The member States with a collaborative system are Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Liechtenstein, Monaco, Montenegro, Norway (in most cases), Poland, Portugal, Serbia, Slovakia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia" and Ukraine. The collaborative system, which can also be employed alongside the traditional jury model, is characterised by the fact that the professional judges and the jurors collectively determine all questions of law and fact, the issue of guilt and the sentence.

47. The ten Council of Europe member States that have opted for a traditional jury system are Austria, Belgium, Georgia, Ireland, Malta, Norway (only in serious appeal cases), the Russian Federation, Spain, Switzerland (the Canton of Geneva), until 1 January 2011, and the United Kingdom (England, Wales, Scotland and Northern Ireland).

48. In its traditional form, trial by jury involves a combination of a number of jurors sitting with one or more professional judges. The number of jurors varies according to the country and the subject matter of the proceedings. The number of professional judges varies from country to country. In Ireland, Malta, Russia, Spain, Switzerland and the United Kingdom the court and jury are presided over by a single judge. In Austria,

Belgium and Norway the court consists of three professional judges together with the jury. The professional judges cannot take part in the jury's deliberations on the question of guilt, which falls within the exclusive competence of the jury.

49. In a number of countries the jurors are presented with a list of specific questions before they retire to deliberate on the facts of the case. Seven States – Austria, Belgium, Ireland, Norway, Russia, Spain and Switzerland – follow this practice.

50. In Ireland, England and Wales, at the conclusion of the evidence, the judge sums up the case to the jurors. He reminds them of the evidence they have heard. In doing so, the judge may give directions about the proper approach to take in respect of certain evidence. He also provides the jurors with information and explanations about the applicable legal rules. In that context, the judge clarifies the elements of the offence and sets out the chain of reasoning that should be followed in order to reach a verdict based on the jury's findings of fact.

51. In Norway the judge directs the jurors on each legal issue raised and explains the rules they should follow when they retire to deliberate on the verdict. At the end of the trial, he also sums up the evidence to the jury or draws its attention to evidence of importance.

52. In Austria the jurors' verdict is reached on the basis of a detailed questionnaire which sets out the main elements of the various charges and contains questions requiring a “yes” or “no” answer.

53. In principle, juries deliberate in private, without the presiding judge(s) being present. Indeed, the secrecy of the jury's deliberations is a firmly established principle in many countries.

54. In Belgium a professional judge may be invited to the deliberation room to provide the jury with clarifications on a specific question, without being able to express a view or to vote on the issue of guilt. In Norway the jury may summon the presiding judge, but if the jury considers that it needs further clarifications as to the questions to be answered, the legal principles applicable or the procedure to be followed, or that the questions should be amended or new questions put, it must return to the courtroom, so that the matter can be raised in the presence of the parties.

55. In the Canton of Geneva the presiding judge attends the jury's deliberations to provide assistance, but cannot give an opinion on the issue of guilt. A registrar is also present to make a record of the decisions taken and the reasons given.

56. The general rule appears to be that reasons are not given for verdicts reached by a traditional jury. This is the case for all the countries concerned, except Spain and Switzerland (Canton of Geneva).

57. In Spain the jury's verdict is made up of five distinct parts. The first lists the facts held to be established, the second lists the facts held to be not established, the third contains the jury's declaration as to whether the

accused is guilty or not guilty, and the fourth provides a succinct statement of reasons for the verdict, indicating the evidence on which it is based and the reasons why particular facts have been held to be established or not. A fifth part contains a record of all the events that took place during the discussions, avoiding any identification that might infringe the secrecy of the deliberations.

58. Until 1991 the authorities of the Canton of Geneva considered that the jury satisfied the requirement of a reasoned decision by answering “yes” or “no” to the precise questions put to it. However, in a decision of 17 December 1991 the Federal Court found such replies to be insufficient and required juries in the canton to give reasons for their verdicts in future. In 1992 Articles 298 and 308 of the Geneva Code of Criminal Procedure were amended to require the jury to state reasons for its choices should it consider that this was necessary for an understanding of its verdict or its decision. Article 327 of the Code of Criminal Procedure requires the jury to state “*the reasons for taking into account or disregarding the main items of evidence and the legal reasons for the jury's verdict and the decision by the court and the jury as to the sentence or the imposition of any measure*”.

59. Within the States that have opted for a traditional jury system, an appeal against the jury's verdict is available in Georgia, Ireland, Malta, Spain, Sweden and the United Kingdom, whereas no appeal is available in Austria, Belgium, Norway, Russia and Switzerland (Canton of Geneva). In Austria, convicted persons may appeal to the Court of Appeal against the sentence only; they may also file a plea of nullity with the Supreme Court.

60. In Belgium, since the events in issue in the present case, the Law of 21 December 2009, which came into force on 21 January 2010 (see paragraph 36 above), has amended the procedure in the Assize Court, notably by requiring it to state the main reasons for the verdict reached by the jury, in order to clarify its meaning.

THE LAW

I. SCOPE OF THE CASE BEFORE THE GRAND CHAMBER

61. In his observations before the Grand Chamber the applicant reiterated all the complaints he had raised in his application to the Court. In its judgment of 13 January 2009 the Chamber declared the complaints concerning the failure to give reasons for the Assize Court's judgment (Article 6 § 1) and to examine the anonymous witness (Article 6 § 3 (d)) admissible and the remaining complaints inadmissible. Accordingly, the Grand Chamber will examine only the complaints declared admissible by

the Chamber, as the "case" referred to it is the application as it has been declared admissible by the Chamber (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, §§ 140-41, ECHR 2001-VII).

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

62. The applicant submitted that his right to a fair trial had been infringed in view of the fact that his conviction by the Assize Court had been based on a guilty verdict which did not contain reasons and could not be appealed against to a body with full jurisdiction. He alleged a violation of Article 6 § 1, the relevant part of which provides:

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

A. The Chamber judgment

63. In its judgment of 13 January 2009 the Chamber held that there had been a violation of the applicant's right to a fair trial under Article 6 § 1 of the Convention. It found that the questions to the jury had been formulated in such a way that it could not be ascertained why each of them had been answered in the affirmative when the applicant had denied all personal involvement in the alleged offences. The Chamber considered that such laconic answers to vague and general questions could have left the applicant with an impression of arbitrary justice lacking in transparency. Not having been given a summary of the main reasons why the Assize Court was satisfied that he was guilty, he had been unable to understand – and therefore to accept – the court's decision. The Chamber found that in general, since the jury did not reach its verdict on the basis of the case file but on the evidence it had heard at the trial, it was essential, for the purpose of explaining the verdict, both to the accused and to the public at large, to highlight the considerations that had persuaded the jury of the accused's guilt or innocence and to indicate the precise reasons why each of the questions had been answered in the affirmative or the negative.

B. The parties' submissions

1. The applicant

64. The applicant submitted that his conviction had been based on a guilty verdict which had not included any reasons and had not been subject to any form of appeal. As the case had been extremely complex in both factual and legal terms, it had been difficult for twelve jurors without any appropriate legal qualifications to be able to make a wholly lawful

assessment of the merits of the charge against him. The lack of reasoning in the guilty verdict precluded any possibility of an appropriate judicial review of the reasons on which the jury's finding had been based. The mere fact that Article 364 *bis* of the CCP provided that every judgment convicting an accused had to mention the grounds for the determination of the sentence was not sufficient to satisfy the reasoning requirement imposed by Article 6 of the Convention.

65. Referring to *Ruiz Torija v. Spain* (9 December 1994, Series A no. 303-A) and *Papon v. France* ((dec.), no. 54210/00, ECHR 2001-XII), the applicant pointed out that an obligation to state reasons was laid down in the Court's case-law, although the Court had qualified it in a number of ways. However, he submitted that his case could not be compared to that of Maurice Papon, in which it had been possible to discern a proper set of reasons from the 768 answers given by the jury. Those answers had provided an indication of why the French Assize Court had found him guilty and sentenced him. In the present case, however, the questions put during the trial had not in any way addressed the substance of the case; there had been very few of them – only four of the thirty-two questions had concerned the applicant – and they had related solely to whether he was guilty of murder or attempted murder and had simply received the answer "yes", without any further explanation.

66. In the applicant's submission, three arguments based on legal logic militated in favour of requiring assize courts to give reasons for their judgments. The first two were based on Article 6 § 1 of the Convention. Firstly, the case-law acknowledged that reasoned court decisions formed part of the guarantees of a fair trial. It would be illogical for the standard required in this area to be lower for proceedings resulting in the most severe criminal penalties. Secondly, Article 6 § 1 forcefully emphasised the public nature of justice. The third argument was based on Article 6 § 3 (a), which acknowledged that anyone charged with a criminal offence was entitled to be informed in detail of the nature and cause of the accusations against him. The applicant contended that that right should also extend to the cause of his conviction. The problem of miscarriages of justice likewise supported the view that reasons should be given. The fact of requiring a court to state reasons for a decision meant that it had to express a coherent and rational line of reasoning purged of all emotional and subjective considerations. Lastly, the inclusion of reasons made a review by the courts of appeal and cassation possible; such a review would not have the same scope at all where no reasons were given for the decision as to guilt.

2. The Government

67. The Government noted, firstly, that European legal systems were marked by considerable diversity: some did not have, or no longer had, a system of lay adjudication, while others did, but its operation, in particular

the role entrusted to the jury and the way in which it functioned, differed from one State to another. Furthermore, the Court was not a third- or fourth-instance body. Its task was not to decide in the abstract or to standardise the different legal systems, but to ascertain whether the procedures in place satisfied the requirements of Article 6 of the Convention.

68. In Belgium the legitimacy of the assize courts was ensured by the institution of the jury. The jurors represented the people, from whom they came, and thus themselves enjoyed institutional legitimacy. The composition of the jury was the principal safeguard against arbitrary justice.

69. The absence of explicit reasons did not mean that the verdict as to guilt was not reached as the result of a reasoning process, which the persons concerned were capable of following and reconstructing. Furthermore, the Court had never found that the lack of reasons in assize court decisions raised an issue in the abstract under Article 6 of the Convention. Although the Court had held in *Göktepe v. Belgium* (no. 50372/99, 2 June 2005) that it was necessary to put distinct questions in respect of each defendant on the existence of aggravating circumstances, it had not objected to the functioning of the Assize Court or to the absence of reasons in decisions reached by the jury in such courts under Belgian law.

70. The conduct of proceedings in Belgian assize courts ensured that each accused was able to obtain a reasoned judgment on the lawfulness and validity of the evidence and to have a sufficient idea of what evidence had been decisive and, where appropriate, which of the defence's arguments the jury had taken into account in reaching its verdict. In the instant case the questions formulated at the end of the oral proceedings by the President of the Liège Assize Court in relation to the applicant's guilt had been sufficiently precise to serve as an adequate basis for the court's judgment. The constituent elements of the offences and the acts held against the accused had been clearly indicated, as had the aggravating circumstances. The applicant had had access to the indictment and had had the opportunity to attend the lengthy oral proceedings during which the evidence had been discussed. It was therefore futile for him to claim that he was not aware of the grounds for his conviction. The mere fact that the jurors reached the verdict on the basis of their personal conviction did not amount to a violation of the Convention.

3. *Third-party interveners*

(a) The United Kingdom Government

71. The United Kingdom Government submitted that it was clear from the Court's case-law, in particular *Saric v. Denmark* ((dec.), no. 31913/96, 2 February 1999), that trial by jury could not be considered contrary to the Convention. There was no absolute obligation for a court to give reasons for

every decision, and the Court's approach was sufficiently flexible to accommodate the particularities of the system of jury trial.

72. While the right of an accused to a fair trial should never be compromised, it could be attained in different ways in the Contracting States' criminal justice systems. States were to be afforded a margin of appreciation in arranging the judicial procedures through which the right to a fair trial was secured. The questions and answers for the jury fell to be considered not in isolation but in the context of the proceedings as a whole, taking account of the procedural safeguards and the possibilities of appeal.

73. The important question was whether, regard being had to the trial as a whole, the convicted person was aware of the charge against him, the legal ingredients of the offence of which he was accused and the basis for his conviction.

74. The United Kingdom Government submitted that in the British system of jury trial, at the conclusion of the evidence, the judge summed up the case to the jurors. He reminded them of the evidence they had heard. In doing so, he could give directions about the proper approach, or indeed the caution, to adopt in respect of certain evidence. He also provided the jury with information and explanations about the applicable legal rules. On that account, he clarified the constituent elements of the offence and set out the chain of reasoning that should be followed in order to reach a verdict based on the jury's findings of fact. Both prosecution and defence could make submissions on the conclusion which, in their view, the jury should reach.

75. The jury deliberated in private. If it required further explanations or guidance on any particular point, it could submit a note to the judge, setting out any questions it wished to ask him. The judge showed the note to counsel for the prosecution and the defence in the absence of the jury and invited their submissions on a suitable response, after which he was free to decide whether or not the jury should be given the further directions requested in open court.

(b) The Irish Government

76. In the Irish Government's submission, the system of jury trial in Ireland was the unanimous choice of accused persons and of human-rights advocates and was viewed as a cornerstone of the country's criminal-law system. There had never been a complaint that the system lacked transparency or impinged on or inhibited the rights of the accused. The system inspired confidence among the Irish people, who were very attached to it for historical and other reasons.

77. The Irish Government observed that in Irish law, the judge's directions to the jury provided the framework for its verdict. The judge directed the jurors on each legal issue raised and explained the rules they should follow when deliberating in order to reach a verdict. At the end of the trial, he also summed up the evidence to the jury or drew its attention to

evidence of importance. He advised it as to the requirement for the evidence to provide sufficient proof of the accused's guilt, the circumstantial or direct nature of particular evidence and the scope of the evidence adduced. It was open to counsel for the accused to ask the judge to clarify the directions given to the jury if they were perceived to be inadequate, insufficient or unclear in any way. If the jury required further explanations or guidance on a particular point, it could call on the judge to act as necessary.

78. The Irish Government wondered how a system of trial that had been in operation for centuries and long predated the Convention could now be considered to breach Article 6 § 1. The Chamber judgment had not sufficiently taken into account the assize court procedure as a whole and the safeguards existing in Belgium and other States. The Court should have examined whether any alteration to other procedural rules or rules of evidence could have assisted in understanding the decision. In the *Gregory v. the United Kingdom* judgment (25 February 1997, *Reports of Judgments and Decisions* 1997–I) the Court had acknowledged that the secrecy of jury deliberations was a crucial and legitimate feature of English trial law which served to reinforce the jury's role as the ultimate arbiter of fact and to guarantee open and frank deliberations among the jurors on the evidence which they had heard.

79. The Irish Government submitted that the confidentiality of jury deliberations was intertwined with the absence of reasons. To require juries to give reasons for their decisions would alter the nature and the very essence of the system of jury trial as operated in Ireland.

(c) The French Government

80. In the French Government's submission, positive law did not require reasons to be given for the decisions of criminal courts that sat with lay juries, nor had it ever done so since the introduction of such courts. The essential peculiarities of assize court procedure lay in three fundamental principles: the oral and uninterrupted nature of proceedings and the rule of personal conviction. Those characteristics, deriving directly from the participation of citizens in the act of judging, had in French law always militated against giving reasons for judgments delivered by assize courts. The principle that no reasons were to be given was unequivocally set forth in Article 353 of the Code of Criminal Procedure, where it was linked to that of personal conviction, which was likewise made explicit: the jurors' decision was not to be dictated by legal standards or rules but by the examination, through their “conscience” and “rational faculties”, of the evidence heard in the adversarial proceedings which they had attended. The French Court of Cassation took the view that the only legally admissible “reasoning” in the judgment of an assize court was constituted by the answers to the questions put to the jury and by the single words “yes” or

"no". There had been proposals to relax the principle of not including reasons, but the French Parliament had never adopted them.

81. Although one or more member States of the Council of Europe had introduced a system of giving reasons for decisions reached by a jury, that argument could not justify a departure from the Court's case-law and form a basis for finding a violation of the Convention. The extreme diversity among legal systems as to the involvement of lay judges in trying certain criminal offences precluded a general assessment of a question such as the inclusion of reasons in decisions. The mere fact that a reform was adopted in a particular country did not mean that it had unanimous support there. Furthermore, an approach adopted in one system could not necessarily be transposed to another.

82. The French Government further argued that the Court should not extend its powers to harmonising the domestic law of the States Parties; to do so would disrupt legal systems and undermine both the authority of its own judgments and the normal democratic process in the member States. There was a great risk that departures from settled case-law might discredit not only the Court's judgments but also the very concept of human rights. It was the Court's task to ensure that developments in domestic legislation were in accordance with the Convention, but only with the utmost caution and a heightened sense of moderation could the Court take the place of the democratic process in altering legal systems that were rooted in individual States' history and culture, especially after having previously held that those systems complied with the Convention. The departure from precedent by the Second Section of the Court had disrupted the normal functioning of the courts not only in Belgium but also in France. The risk that assize court proceedings that were currently in progress might have to be reopened, with the considerable organisational and, above all, human consequences that would entail, could not be ruled out.

C. The Court's assessment

1. General principles

83. The Court notes that several Council of Europe member States have a lay jury system, guided by the legitimate desire to involve citizens in the administration of justice, particularly in relation to the most serious offences. The jury exists in a variety of forms in different States, reflecting each State's history, tradition and legal culture; variations may concern the number of jurors, the qualifications they require, the way in which they are appointed and whether or not any forms of appeal lie against their decisions (see paragraphs 43-60 above). This is just one example among others of the variety of legal systems existing in Europe, and it is not the Court's task to standardise them. A State's choice of a particular criminal justice system is

in principle outside the scope of the supervision carried out by the Court at European level, provided that the system chosen does not contravene the principles set forth in the Convention (see *Achour v. France* [GC], no. 67335/01, § 51, ECHR 2006-IV). Furthermore, in cases arising from individual petitions the Court's task is not to review the relevant legislation in the abstract. Instead, it must confine itself, as far as possible, to examining the issues raised by the case before it (see, among many other authorities, *N.C. v. Italy* [GC], no. 24952/02, § 56, ECHR 2002-X).

84. Accordingly, the institution of the lay jury cannot be called into question in this context. The Contracting States enjoy considerable freedom in the choice of the means calculated to ensure that their judicial systems are in compliance with the requirements of Article 6. The Court's task is to consider whether the method adopted to that end has led in a given case to results which are compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case. In short, it must ascertain whether the proceedings as a whole were fair (see *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B, and *Stanford v. the United Kingdom*, 23 February 1994, § 24, Series A no. 282-A).

85. The Court observes that it has already had occasion to deal with applications concerning procedure in the assize courts. Thus, in the case of *R. v. Belgium* (no. 15957/90, Commission decision of 30 March 1992, Decisions and Reports (DR) 72) the European Commission of Human Rights found that although no reasons had been given for the jury's finding of guilt, the President of the Assize Court had at least put questions to the jury beforehand concerning the facts of the case and the accused had been able to challenge the questions. The Commission considered that those precise questions, some of which could be put at the request of the prosecution or the defence, formed a framework for the decision in issue and compensated sufficiently for the brevity of the jury's replies. The Commission rejected the application as being manifestly ill-founded. It followed a similar approach in the cases of *Zarouali v. Belgium* (no. 20664/92, Commission decision of 29 June 1994, DR 78) and *Planka v. Austria* (no. 25852/94, Commission decision of 15 May 1996).

86. In the *Papon v. France* decision (cited above) the Court observed that the prosecution and the accused had been afforded the opportunity to challenge the questions put and to ask the president to put one or more additional questions to the jury. Noting that the jury had answered the 768 questions put by the President of the Assize Court, it considered that the questions formed a framework on which the decision had been based and that their precision sufficiently offset the fact that no reasons were given for the jury's answers. The Court dismissed as manifestly ill-founded the complaint concerning the lack of reasoning in the Assize Court's judgment.

87. In *Bellerín Lagares v. Spain* ((dec.), no. 31548/02, 4 November 2003) the Court observed that the impugned judgment – to which a record of the jury's deliberations had been attached – contained a list of the facts which the jury had held to be established in finding the applicant guilty, a legal analysis of those facts and, for sentencing purposes, a reference to the circumstances found to have had an influence on the applicant's degree of responsibility in the case at hand. It therefore found that the judgment in question had contained sufficient reasons for the purposes of Article 6 § 1 of the Convention.

88. In *Göktepe v. Belgium* (cited above, § 28) the Court found a violation of Article 6 on account of the Assize Court's refusal to put distinct questions in respect of each defendant as to the existence of aggravating circumstances, thereby denying the jury the possibility of determining the applicant's individual criminal responsibility. In the Court's view, the fact that a court had not taken into account arguments on a vital issue with such serious consequences had to be considered incompatible with the adversarial principle, which lay at the heart of the notion of a fair trial. That conclusion was particularly compelling in the case at hand because the jurors had not been permitted to give reasons for their verdict (ibid., § 29).

89. In the *Saric v. Denmark* decision (cited above) the Court held that the absence of reasons in a judgment, owing to the fact that the applicant's guilt had been determined by a lay jury, was not in itself contrary to the Convention.

90. It follows from the case-law cited above 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. 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, among many other authorities, *mutatis mutandis*, *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X). 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, and *Tatishvili v. Russia*, no. 1509/02, § 58, ECHR 2007-III).

91. In proceedings conducted before professional judges, the accused's understanding of his conviction stems primarily from the reasons given in judicial decisions. In such cases, the national courts must indicate with sufficient clarity the grounds on which they base their decisions (see *Hadjianastassiou v. Greece*, no. 12945/87, 16 December 1992, § 33, Series A no. 252). Reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thereby contributing

to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence. However, the extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija*, cited above, § 29). While courts are not obliged to give a detailed answer to every argument raised (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288), it must be clear from the decision that the essential issues of the case have been addressed (see *Boldea v. Romania*, no. 19997/02, § 30, ECHR 2007-II).

92. 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 paragraphs 85-89 above). In these circumstances likewise, 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 (see paragraph 90 above). 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 (see paragraphs 43 et seq. above), 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 (see *Papon*, cited above). Lastly, regard must be had to any avenues of appeal open to the accused.

2. *Application of the above principles to the present case*

93. In the present case, it should be noted that in his submissions before the Court the applicant complained that no reasons had been given for the guilty verdict in his case and that no appeal lay against the Assize Court's decision. As has been reiterated (see paragraph 87 above), the absence of a reasoned verdict by a lay jury does not in itself constitute a breach of the accused's right to a fair trial. 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. 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-...).

94. In the instant case, the applicant was charged with the murder of an honorary minister and the attempted murder of the latter's partner. However, neither the indictment nor the questions to the jury contained sufficient

information as to the applicant's involvement in the commission of the offences of which he was accused.

95. With regard, firstly, to the indictment drawn up by the Principal Public Prosecutor, the Code of Criminal Procedure provides that it should indicate the nature of the offence forming the basis of the charge and any circumstances that may cause the sentence to be increased or reduced, and that it must be read out at the start of the trial (see paragraph 26 above). Admittedly, the accused may challenge the indictment by filing a statement of defence, but in practice the statement will have only limited effect since it is filed at the start of the proceedings, before the trial itself, which must serve as the basis for the jurors' personal conviction. The value of such a statement for a convicted defendant's understanding of why the jury has reached a guilty verdict is therefore limited. In the instant case an analysis of the indictment of 12 August 2003 shows that it contained a detailed sequence of the police and judicial investigations and the many contradictory statements made by the co-accused. Although it mentioned each of the offences with which the applicant was charged, it did not indicate which items of evidence the prosecution could use against him.

96. Furthermore, in order to be able to reach a verdict, the jury had to answer thirty-two questions put by the President of the Assize Court. The applicant, who was appearing in court with seven co-defendants, was concerned by only four of the questions, each of which was answered by the jury in the affirmative (see paragraph 15 above). The questions, which were succinctly worded and were identical for all the defendants, did not refer to any precise and specific circumstances that could have enabled the applicant to understand why he was found guilty. In that respect the present case differs from the *Papon* case (cited above), in which the Assize Court referred to the jury's answers to each of the 768 questions put by the court's president and also to the description of the facts held to have been established and the Articles of the Criminal Code which had been applied (see paragraph 86 above).

97. It follows that, even in conjunction with the indictment, the questions put in the present case did not enable the applicant to ascertain which of the items of evidence and factual circumstances discussed at the trial had ultimately caused the jury to answer the four questions concerning him in the affirmative. Thus, the applicant was unable, for example, to make a clear distinction between the co-defendants as to their involvement in the commission of the offence; to ascertain the jury's perception of his precise role in relation to the other defendants; to understand why the offence had been classified as premeditated murder (*assassinat*) rather than murder (*meurtre*); to determine what factors had prompted the jury to conclude that the involvement of two of the co-defendants in the alleged acts had been limited, carrying a lesser sentence; or to discern why the aggravating factor of premeditation had been taken into account in his case as regards the

attempted murder of A.C.'s partner. This shortcoming was all the more problematic because the case was both factually and legally complex and the trial lasted more than two months, from 17 October 2003 to 7 January 2004, during which time many witnesses and experts gave evidence.

98. In this connection, it should be emphasised that precise questions to the jury were an indispensable requirement in order for the applicant to understand any guilty verdict reached against him. Furthermore, since the case involved more than one defendant, the questions should have been geared to each individual as far as possible.

99. Lastly, it should be noted that the Belgian system makes no provision for an ordinary appeal against judgments of the Assize Court. An appeal to the Court of Cassation concerns points of law alone and accordingly does not provide the accused with adequate clarification of the reasons for his conviction. As regards Article 352 of the CCP, which provides that if the jurors have made a substantive error, the Assize Court must stay the proceedings and adjourn the case until a later session for consideration by a new jury, that option, as recognised by the Government (see paragraph 31 above), is used only rarely.

100. In conclusion, the applicant was not afforded sufficient safeguards enabling him to understand why he was found guilty. Since the proceedings were not fair, there has accordingly been a violation of Article 6 § 1 of the Convention.

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

101. The applicant complained that he had not been able at any stage of the proceedings to examine the anonymous witness or have him examined. He alleged a violation of Article 6 § 3 (d), which provides:

> “3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

102. The Court notes that this complaint is closely linked to the facts which led it to find a violation of Article 6 § 1. In the absence of any reasons for the verdict, it is impossible to ascertain whether or not the applicant's conviction was based on the information supplied by the anonymous witness. In those circumstances, the Court considers that it is not necessary to examine separately the complaint of a violation of Article 6 §§ 1 and 3 (d) of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. As he had done before the Chamber, the applicant sought an award of EUR 100,000 in respect of non-pecuniary damage.

105. The Government submitted that the sum of EUR 4,000 awarded by the Chamber under that head in its judgment of 13 January 2009 was "perfectly reasonable".

106. The Grand Chamber, making its assessment on an equitable basis, awards the applicant EUR 4,000 in respect of non-pecuniary damage.

107. The Court further notes that the Law of 1 April 2007 has amended the Code of Criminal Procedure to allow applicants to seek the reopening of their trial where the Court has found a violation in their case (see paragraphs 38 et seq. above and, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, ECHR 2005-IV).

B. Costs and expenses

108. With regard to costs and expenses, the Court notes that the Chamber decided to award the applicant EUR 8,173.22, an amount which was not contested by the Government. In respect of the proceedings before the Grand Chamber, the applicant received EUR 1,755.20 in legal aid from the Council of Europe. Accordingly, the Court confirms the amount of EUR 8,173.22 awarded by the Chamber.

C. Default interest

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

2. *Holds* that it is not necessary to examine separately the complaint of a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the failure to examine the anonymous witness;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,173.22 (eight thousand one hundred and seventy-three euros and twenty-two cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 November 2010.

Michael O'Boyle	Jean-Paul Costa
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Jebens is annexed to this judgment.

J.-P.C.
M.O'B.

CONCURRING OPINION OF JUDGE JEBENS

I agree that there has been a violation of Article 6 § 1 in respect of the applicant's conviction, and I also agree with the reasoning in the judgment. However, I would like to clarify my own view on the Court's application of Article 6 of the Convention in cases relating to jury trials by adding the following.

1. My point of departure is that while Article 6 § 1 secures the right to a fair trial in criminal proceedings, it provides limited assistance with regard to the contents of the fair-trial guarantee. This was a deliberate choice by the drafters of the Convention, in acknowledgment of the diversity among European legal systems and the fact that a fair trial in criminal cases can be secured within each system. The Contracting States have therefore been afforded a margin of appreciation in organising their judicial procedures, and the Court must for the same reasons apply the principle of subsidiarity in this respect.

2. It furthermore transpires from the Court's case-law that when applying the fair-trial test in jury cases, the Court ensures that the operation of the jury system is governed by certain procedural guarantees which it regards as sufficient in order to secure a fair trial. The guarantees include, in particular, the inclusion in the indictment and questions to the jury of an accurate description of the relevant facts and the applicable legal provisions, both of which are necessary in order to clarify the legal basis on which the conviction of the accused is sought, and the assumption of a central role by the presiding judge in ensuring that the trial proceedings are conducted in a fair manner and that proper instructions are given to the jury.

3. The question of whether the right to a fair trial has been attained in a jury case must therefore be addressed on the basis of the peculiarities of that system, notably the fact that jury verdicts are not accompanied by reasons. For the Court to require juries to give reasons for their verdicts would therefore not only contradict its case-law, but would also, more importantly, undermine the very existence of the jury system, and thereby impermissibly trespass on the State's prerogative to choose its criminal justice system.

4. Following the Chamber's judgment in this case, Belgium passed the Assize Court Reform Act, which requires the Assize Court to state the main reasons for the conviction of the indicted person, the reasons being formulated by the members of the court and the jury. Another example of national courts' attempts to comply with the Chamber judgment is that in Norway the High Courts have been required by the Supreme Court, in exceptional cases, to state which evidence was decisive for the conviction or to present the reasons for the conviction, these explanations to be given by the judges alone, without the participation of members of the jury. Bearing in mind that in both the above-mentioned situations the verdict is reached by the jury and that the judges have not taken part in the deliberations, it is

in my view questionable whether such accommodations can be seen as truly reflecting the opinion of the jurors and providing the accused person with any more clarity than an unreasoned verdict.

5. These newly established practices reflect the uncertainty and lack of foreseeability which the Chamber judgment in the present case has caused in some States as to whether and how to provide reasons for jury verdicts. This is in my view another reason why the Court should not question the operation of the jury system as such, but examine whether sufficient procedural guarantees were in place in the particular case before it.