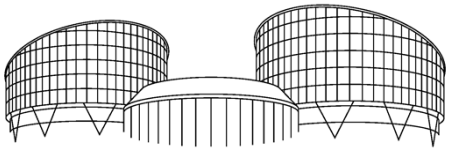

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF YAKUBA v. UKRAINE

(Application no. 1452/09)

JUDGMENT

STRASBOURG

12 February 2019

FINAL

12/05/2019

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

In the case of Yakuba v. Ukraine,

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

Paulo Pinto de Albuquerque, *President,*
Ganna Yudkivska,
Faris Vehabović,
Iulia Antoanella Motoc,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 22 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 1452/09) 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 Vasyl Ivanovych Yakuba ("the applicant"), on 10 March 2009.

2. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer admitted to practice in Odessa. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna.

3. The applicant alleged, in particular, under Article 3 of the Convention that he had been ill-treated by the police in the course of his arrest, under Article 6 of the Convention that he had not been allowed to examine the video recording which documented the purchase of drugs from him by an undercover agent and that the domestic courts had failed to ensure his right to examine that agent and, under Article 34 of the Convention, that the authorities had refused to allow him to obtain copies of documents he needed for substantiation of his application to the Court.

4. On 11 January 2011 notice of the application was given to the Government. At that stage of the proceedings the Government were not invited to submit observations on the case. On 9 October 2013 the Court invited the Government to submit observations on the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and, at the time of his latest communication with the Court, was detained in Kirovograd.

A. The test purchase operation against the applicant and his arrest

6. The applicant, who had a number of prior drugs-related convictions, was targeted in an undercover operation in the form of a test purchase of drugs.

7. According to the decisions of the domestic courts, P., apparently a private individual recruited by the police as an undercover agent, was supplied with cash in front of attesting witnesses and, subsequently, out of their sight, made three purchases from the applicant and returned with syringes filled with opium, which he handed over to the police in the presence of the witnesses. The first purchase was video-recorded, apparently with a hidden camera (see paragraph 15 below).

8. The applicant was subsequently convicted of selling P. small quantities of an opioid substance on three occasions, namely on 26 February and 6 and 9 March 2007 (see paragraph 21 below).

9. On 9 March 2007 the applicant was arrested. At the opening of his subsequent trial the applicant admitted that at the time of his arrest he had had a drug-filled syringe in his sleeve and, in trying to get rid of the drug, had ejected the liquid over his sweater and had thrown it on the ground near him. At some point in the proceedings he started denying that he had a syringe on him at the moment of arrest, even though he continued to admit that that day he had purchased drugs for his own consumption (see paragraph 19 below).

10. The police had pushed the applicant to the ground and handcuffed him. According to the applicant, after he had been immobilised on the ground the police had continued to drag him around, causing him pain and humiliation.

B. The applicant's allegations of ill-treatment

11. On the day of the arrest the two arresting officers filed reports with their superiors, stating that because the applicant had attempted to destroy evidence during the arrest they had deployed force ("*були застосовані заходи впливу*") to prevent him from doing so, and had handcuffed him.

12. On 15 March 2007 the applicant's lawyer requested the investigator to order a medical examination for the applicant. The lawyer stated that the

applicant had been beaten up by the police while being arrested, and also subsequently at a police station. On the same day the applicant was examined by a medical expert, who noted that the applicant had abrasions on his right hand and shin and on both knees, which could have been sustained on 9 March 2007. Abrasions on his legs could have been caused by a fall.

13. On 8 May 2007 the prosecutors refused to institute criminal proceedings against the police officers who had taken part in the applicant's arrest. The applicant did not appeal against that decision but continued to allege, before the courts which were dealing with his criminal case, that he had been ill-treated by the police at the time of his arrest. The text of his submissions in that respect has not been submitted to the Court. Those courts (see paragraphs 21, 24 and 26 below) rejected the complaints as unsubstantiated, finding that the police had used force against the applicant during his arrest lawfully, and that the prosecutors had examined the applicant's complaints in proper fashion.

C. The criminal proceedings against the applicant

14. On the day of the arrest and on several other occasions in the course of the investigation the applicant's rights as a criminal suspect were explained to him and the investigator attempted to question him. However, the applicant stated that he wished to remain silent.

15. On 20 April 2007 the police investigator, in the presence of two attesting witnesses, watched a videotape and noted in a report that the tape showed the applicant selling drugs to P. as part of the test purchase. The applicant's lawyer asked to watch the tape. On 27 April 2007 the investigator refused this request on the grounds that P.'s real identity was being protected and the showing of the tape would lead to the disclosure of P.'s identity and put his life and health in danger.

16. The applicant submitted to the investigating authority that a certain B. had been with the applicant on the day of his arrest and could confirm that he had bought drugs for his own consumption. The applicant asked for B. to be found and examined as a witness. The applicant identified him by his first and last name and stated that B. lived in "one of the neighbouring streets" but that he did not know the exact address. The investigator ordered the police to search for B. The police reported that their search had been unsuccessful.

17. P. was questioned by the investigator. He described how he had purchased drugs from the applicant on three occasions as part of a test purchase operation.

18. The bill of indictment against the applicant, sent to the Kirovograd Kirov District Court as the trial court, identified P. as one of the witnesses to be summoned in the course of the trial. It also identified the police report

summarising the video recording of the first test purchase (see paragraph 15 above) as one of the elements of proof against the applicant.

19. The applicant admitted that he had bought and kept drugs for himself, but not for sale, on 9 March 2007, and that on that occasion he had been accompanied by B. The applicant denied buying or selling drugs on two other occasions. At the opening of the trial the applicant admitted that at the time of his arrest he had had a drug-filled syringe on him and, in trying to get rid of the drug, had ejected the liquid over his clothes. At a later point in the proceedings he started denying that he had had a syringe on him at the time of his arrest.

20. It appears that during the trial the applicant asked the trial court to disclose to the defence the video recording of the first test purchase and to call and examine P. (the undercover agent), B. (see paragraph 16 above), and the forensic expert who had compiled a report stating that the applicant's clothes and a syringe found on him on the day of the arrest contained traces of an illegal drug. Those requests were refused, for unknown reasons.

21. On 26 June 2007 the trial court found the applicant guilty of drug trafficking and sentenced him to eight years' imprisonment. The court found that the applicant had sold drugs to P. on three occasions in February and March 2007. The court relied on:

(i) the in-court statements by the police officer who had arranged the test purchase and one of the attesting witnesses who had certified the records of that operation (see paragraph 7 above). The witness had described the operation in detail, to the effect that, on three occasions, banknotes with certain numbers had been handed over to P. to buy drugs from the applicant; P. had then returned with filled syringes stating that he had purchased them from the applicant. The police officer gave largely similar evidence;

(ii) written statements by P. and another police officer involved in the organisation of the test purchase, obtained at the pre-trial stage;

(iii) the fact, documented in a police report, that a banknote used by the police for use in the test purchase had been found on the applicant at the time of arrest. It is not clear from the trial court's judgment on which of the three dates the banknote had been used;

(iv) results of a forensic expert analysis showing that the applicant's sweater contained traces of drugs, as did the syringes the undercover agent had bought from the applicant.

22. According to the decisions of the domestic courts, between September 2007 and January 2008, in preparation for his appeal the applicant examined the case file on at least twenty-one occasions.

23. The applicant and his lawyer appealed, challenging the trial court's factual and legal findings. They also complained about the court's refusal to summon P., to order an inquiry into the applicant's complaints of

ill-treatment by the police, and to examine the video recording of the test purchase. They questioned whether the video actually existed and adequately reflected the events, given that neither P.'s pre-trial evidence nor records connected to the test purchase indicated that it was video-recorded.

24. On 25 March 2008 the Kirovograd Regional Court of Appeal upheld the applicant's conviction, finding that no serious procedural violations had been committed in the proceedings and that the conviction had been based on sufficient evidence. The Court of Appeal went on to note that, in addition to the evidence cited by the trial court, the applicant's guilt was also evidenced by the investigator's report on the examination of the video recording of the test purchase (see paragraph 15 above).

25. The applicant appealed in cassation. The parties have not provided a copy of that appeal. The text of the Supreme Court's decision on the appeal indicates that the applicant raised arguments largely similar to those raised in his first appeal.

26. On 4 September 2008 a judge of the Supreme Court found that the applicant's appeal was unsubstantiated, and refused to order a cassation review of the case. In particular, the judge noted that the witnesses on whose statements the conviction had been based had been duly questioned, and that the Court of Appeal had lawfully rejected the applicant's complaints of lack of access to the case file.

D. The applicant's efforts to obtain copies of documents for his application to the Court

27. In order to substantiate his application, in particular as regards the complaints of an unfair trial, the applicant submitted a number of requests to the trial court, which had kept the case file, for copies of various procedural documents, including records of court hearings, and his cassation appeal.

28. On 10 October 2008 the trial court rejected the applicant's request, stating that the domestic law did not provide for any procedure for a convict to examine a case file after completion of criminal proceedings, when the convict was already serving his sentence. The trial court gave similar responses to the applicant's new requests on 30 March 2009 and 27 May 2013. On 28 October 2008 the Court of Appeal also gave a similar response.

II. RELEVANT DOMESTIC LAW

29. At the material time Article 307 § 2 of the Criminal Code made repeated sale of drugs or their possession with intent to sell them punishable by five to ten years' imprisonment. Article 309 § 2 made repeated purchase and possession of drugs without intent to sell them punishable by two to five years' imprisonment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant alleges that he was ill-treated by the police, contrary to Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

31. The Government contested that argument. They argued that, by failing to appeal against the decision not to institute criminal proceedings against police officers (see paragraph 13 above), the applicant had failed to exhaust effective domestic remedies. They also argued that the applicant's complaint was unsubstantiated: proportionate force had indeed been used against him in order to prevent him from destroying evidence.

32. The Court notes that is has already held in *Kaverzin v. Ukraine* (no. 3893/03, § 97, 15 May 2012) that the remedies suggested by the Government were not effective. However, the applicant's complaint is, in any event, inadmissible for the following reasons.

33. It appears from the arresting officers' reports that force was indeed used against the applicant on the day of the arrest (see paragraph 11 above). However, by his own admission (see paragraph 19 above), the applicant had attempted to destroy evidence, and the police deployed force to prevent that destruction and arrest him. Therefore, there is no reason to cast doubt on the domestic authorities' conclusions in that respect (see paragraph 13 above). The case-file material, in particular the medical evidence, fully supports those findings (see paragraph 12 above). Under such circumstances, the Court finds no reason to doubt that that use of force was made strictly necessary by the applicant's own conduct.

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

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

35. The applicant complained that admission in evidence of P.'s untested pre-trial statements and non-disclosure of the video recording of the test purchase to the defence breached his rights under Article 6 of the Convention, the relevant parts of which read:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:

...

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

(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;

..."

A. Admissibility

36. The Court notes that this part of the application 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

1. The parties' submissions

37. The applicant submitted that there had been a violation of Article 6 §§ 1 and 3 (d) in that P. had not been examined during the trial. There had been no real danger for P., since the applicant's trial had not attracted any public attention. There had been no safeguards of any kind to ensure the rights of the defence.

38. The applicant further submitted that there had been a violation of Article 6 §§ 1 and 3 (b) because, despite repeated requests, he had not been allowed to examine the video recording of the test purchase, one of the main pieces of evidence against him.

39. The Government submitted that the applicant had been given sufficient time to examine the case file in the preparation of his defence, and that all witnesses whose evidence was relevant to the proceedings had been called and examined.

2. The Court's assessment

(a) Scope of the complaints

40. The applicant denied having sold drugs and did not complain that he was the victim of entrapment (compare *Lyubchenko v. Ukraine* (dec.), no. 34640/05, § 33, 31 May 2016). His defence consisted in attempting to prove that he had purchased and carried drugs for his own and his friend's consumption on one occasion, on 9 March 2007. In other words, he attempted to prove that, while he had committed a drug offence, he had not been involved in selling drugs on three occasions, a much more serious charge (see paragraph 29 above). The issue before the Court, then, is whether the applicant was afforded a fair opportunity to make that case, on

account of his inability to examine P. and to view the video recording of the test purchase.

(b) Relevant general principles

41. According to the Court's well-established case-law, the guarantees contained in paragraph 3 of Article 6 are specific aspects of the general concept of a fair trial set forth in paragraph 1. The various rights, of which a non-exhaustive list appears in paragraph 3, reflect certain of the aspects of the notion of a fair trial in criminal proceedings. When compliance with paragraph 3 is being reviewed, its basic purpose must not be forgotten, nor must it be severed from its roots. The Court therefore considers complaints under Article 6 § 3 under paragraphs 1 and 3 of Article 6 taken together (see *Correia de Matos v. Portugal* [GC], no. 56402/12, § 119, 4 April 2018).

(i) Witnesses for the prosecution

42. The Court formulated the general principles to be applied in cases where a prosecution witness had not attended a trial and statements previously made by him or her had been admitted in evidence in *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 119-47, ECHR 2011), and *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 110-31, ECHR 2015). A restatement of those principles can be found in *Seton v. the United Kingdom* (no. 55287/10, §§ 57-59, 31 March 2016), and *Boyets v. Ukraine* (no. 20963/08, §§ 74-76, 30 January 2018).

(ii) Disclosure of evidence

43. As a rule, Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused (see *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II). The Court notes that an issue with regard to access to evidence may arise under Article 6 in so far as the evidence at issue is relevant for the applicant's case, specifically if it had an important bearing on the charges held against the applicant. This is the case if the evidence was used and relied upon for the determination of the applicant's guilt, or it contained such particulars which could have enabled the applicant to exonerate himself or herself or have his or her sentence reduced with regard to the charges held against him or her. It should be also noted that the relevant evidence in this context is not only evidence directly relevant to the facts of the case, but also other evidence that might relate to the admissibility, reliability and completeness of the former (see *Matanović v. Croatia*, no. 2742/12, § 161, 4 April 2017, with further references).

44. However, the entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused. In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1. Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see *Rowe and Davis*, cited above, § 61).

45. In cases where evidence has been withheld from the defence on public interest grounds, it is not the role of this Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to assess the evidence before them. Instead, the European Court's task is to ascertain whether the decision-making procedure applied in each case complied, as far as possible, with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused (ibid., § 62).

46. More specifically, Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction of opportunity to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings. Furthermore, the facilities which should be enjoyed by everyone charged with a criminal offence include the opportunity to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings (see *Leas v. Estonia*, no. 59577/08, § 80, 6 March 2012, with further references). Failure to disclose to the defence material evidence which contains such particulars as could enable the accused to exonerate himself or have his sentence reduced would constitute a refusal of facilities necessary for the preparation of the defence, and therefore a violation of the right guaranteed in Article 6 § 3 (b) of the Convention (ibid., § 81).

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

(i) Whether there was a good reason for the non-attendance of P.

47. There appears to be a contradiction between the investigating authority's insistence that there was a need to protect P.'s identity and its own proposal, in the bill of indictment, to call him as a witness at the trial (see paragraphs 15 and 18 above respectively). The domestic courts did not comment on the matter explicitly. The Court concludes that it has not been convincingly established that there was a good reason for P.'s absence.

(ii) Whether the evidence of P. was the sole or a decisive basis for the conviction

48. The domestic courts did not comment on the relevant weight of various elements of evidence against the applicant; they simply listed P.'s pre-trial statement among other evidence against the applicant (see paragraph 21 above). However, P. was the only person who directly participated in the sale of drugs which gave rise to the applicant's conviction. Therefore, his evidence appears to have been decisive for the applicant's conviction.

(iii) Whether there were sufficient counterbalancing factors to compensate for the handicap under which the defence laboured

49. As far as counterbalancing factors were concerned, the applicant enjoyed an opportunity to give his own version of the events and to cast doubt on the credibility of the absent witness and point out any possible incoherence in his statements. There was also some corroborative evidence, at least in respect of some of the three alleged drug transactions, most notably the in-court testimony of one of the attesting witnesses, who had observed the test purchase process, and the discovery of the banknote used in the test purchase operation in the applicant's possession (see paragraph 21 (i) and (iii) above).

50. However, the Court considers that those elements were clearly insufficient to compensate for the handicap under which the defence laboured, especially on account of the procedure followed by the domestic authorities in respect of the video recording of the same events to which P.'s statements related.

(iv) Non-disclosure of the video recording and its treatment by the domestic courts

51. That procedure was such that it permitted the prosecution to determine the meaning of that incriminating material, outside of any scrutiny not only by the defence but also by the domestic courts (see, *mutatis mutandis*, *Rowe and Davis*, cited above, § 63, and contrast *Jasper v. the United Kingdom* [GC], no. 27052/95, § 56, 16 February 2000). The summary of the video used in the proceedings was prepared by the

investigator rather than by an independent party under judicial supervision (contrast *Matanović*, cited above, § 164). The domestic courts showed no consideration for the interests of the defence, engaged in no apparent examination of the question of whether there was real need to protect P.'s identity, and based the applicant's conviction, in part, on undisclosed material which the prosecution alone was allowed to see and the meaning of which the prosecution was allowed to determine outside of any control (see paragraphs 18 and 24 above).

(v) Conclusion

52. The above considerations are sufficient for the Court to conclude that the proceedings overall were not fair.

53. There has, accordingly, been a violation of Article 6 §§ 1 and 3 of the Convention on account of the admission of P.'s untested pre-trial statements in evidence against the applicant and the non-disclosure of the video recording of the test purchase.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

54. The applicant complained that the authorities had refused to provide him with copies of the documents which he needed to substantiate his complaint before the Court. The Court considers it appropriate to examine this complaint under Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

55. The Government stated that during the criminal proceedings the applicant and his lawyer had had access to the case file and could make the necessary copies.

56. The Court observes that it has already dealt with similar situations in a number of cases concerning Ukraine. In particular, in *Vasiliy Ivashchenko v. Ukraine* (no. 760/03, § 123, 26 July 2012) it found that the Ukrainian legal system did not provide prisoners with a clear and specific procedure enabling them to obtain copies of case documents after the completion of criminal proceedings. Since then the Court reaffirmed this conclusion in numerous judgments (see, for example, *Andrey Zakharov v. Ukraine*, no. 26581/06, § 69, 7 January 2016, and *Mushynskyy v. Ukraine* [Committee], no. 3547/06, § 48, 15 September 2016, with further references therein). In the present case, the Government have not provided any reason for the Court to depart from its previous findings; the domestic courts' responses to the applicant's requests (see

paragraph 28 above) illustrate that the same problem manifested itself in his case.

57. Accordingly, the Court concludes that the authorities of the respondent State have failed to comply with their obligations under Article 34 of the Convention on account of their refusal to provide the applicant with copies of documents for his application to the Court.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicant also complained:

(i) under Article 6 of the Convention that the authorities had failed to ensure the presence of B. at the trial so that the defence could examine him; that he had not had the opportunity to examine the expert who analysed the drugs found on him; that he had not been allowed sufficient time to study the case file after the trial, in preparation for his appeal; that the domestic courts had erred in their assessment of the evidence against him, having convicted him of a crime he had not committed; that, in the course of pre-trial investigation, the investigators had refused to allow him to undergo medical treatment for his drug addiction, thus hindering the preparation of his defence, and that some of the case documents had been drafted in Ukrainian, which the applicant did not understand;

(ii) under Article 13 of the Convention that the courts dealing with his criminal case had not remedied the alleged violation of his rights;

(iii) under Article 2 of Protocol No. 7 the applicant complained that the Supreme Court had unlawfully refused to examine his second appeal in cassation, after having rejected his first one.

59. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government contested that claim.

63. The Court, ruling on an equitable basis, awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed EUR 3,600 for the costs and expenses incurred before the Court, to be paid to the bank account of the applicant's representative. He submitted documentary evidence in support of his claim, representing his representative's legal fees and postal expenses.

65. The Government contested that claim, considering the applicant's representative's fees excessive.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and the fact that the applicant has benefitted from legal aid in the amount of EUR 850 which has already been paid to his representative, the Court considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court, to be paid to the bank account of the applicant's representative.

C. Default interest

67. The Court considers it appropriate that the default interest rate 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. *Declares* the complaints under Article 6 §§ 1 and 3 of the Convention, in respect of the admission of P.'s untested pre-trial statements in evidence against the applicant and in respect of the non-disclosure of the video recording of the test purchase to the defence admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention;

3. *Holds* that the authorities of the respondent State have failed to comply with their obligations under Article 34 of the Convention on account of their refusal to provide the applicant with copies of documents for his application to the Court;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:

(i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid to the bank account of the applicant's representative;

(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;

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

Done in English, and notified in writing on 12 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Paulo Pinto de Albuquerque President