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

COURT (CHAMBER)

CASE OF FOUCHER v. FRANCE

(Application no. 22209/93)

JUDGMENT

STRASBOURG

18 March 1997

In the case of Foucher v. France[1],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mr N. VALTICOS,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr A.B. BAKA,
Mr D. GOTCHEV,
Mr K. JUNGWIERT,
Mr U. LOHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 30 November 1996 and 17 February 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 25 January 1996 and by the French Government ("the Government") on 6 February 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 22209/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Frédéric Foucher, on 16 April 1993.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (art. 48). The object of the request and of the

[1] The case is numbered 10/1996/629/812. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 3 of the Convention in conjunction with Article 6 para. 1 (art. 6-3+6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 8 February 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr N. Valticos, Mr I. Foighel, Mr A.B. Baka, Mr L. Wildhaber, Mr D. Gotchev, Mr K. Jungwiert and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr R. Pekkanen, substitute judge, replaced Mr Wildhaber, who was unable to take part in the further consideration of the case (Rules 22 paras. 1 and 2 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 24 July and the Government's memorial on 31 July 1996.

On 8 August 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 November 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mrs C. MARCHI-UHEL, magistrat, on secondment to the Legal Affairs Department, Ministry of Foreign Affairs,
Mrs N. BERTHÉLÉMY-DUPUY, magistrat, on secondment to the Human Rights Office, European and International Affairs Department, Ministry of Justice,
Mr F. FÈVRE, magistrat, on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice,
Mr D. DOUVENEAU, Legal Affairs Department,
Ministry of Foreign Affairs, *Counsel*;

(b) for the Commission

Mr I. BÉKÉS *Delegate*;

(c) for the applicant

Mr P. MASURE, avocat at the Caen Court of Appeal, *Counsel*.

The Court heard addresses by Mr Békés, Mr Masure and Mr Dobelle.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. Mr Frédéric Foucher, a French national who was born in 1972, lives in Argentan in the Orne département.

A. The proceedings in the Argentan Police Court

7. On 24 July 1991 the applicant and his father were summoned to appear before the Argentan Police Court under the direct committal procedure (Article 531 of the Code of Criminal Procedure - see paragraph 16 below). They were charged with having used insulting and threatening words and behaviour towards public-service employees - two national game and wildlife wardens - on 13 February 1991 in Fontenai-sur-Orne. This offence is classified as a fifth-class minor offence under Article R. 40-2 of the Criminal Code, punishable by a term of imprisonment of between ten days and a month and by a fine of between 2,500 and 5,000 French francs (FRF), or by one of these penalties only.

8. The applicant decided to conduct his own case and his mother went to the police court registry on 25 July 1991 to consult the case file and procure copies of the documents it contained. In a note that same day the Argentan public prosecutor stated that copies could not be issued to individuals except through a lawyer or an insurance company.

On 26 July 1991 the applicant and his father went to the registry for the same purpose. In a second note, dated 26 July, the public prosecutor informed them that copies of official reports could not be issued to individuals.

9. At the police court hearing on 2 October 1991 the applicant and his father argued that the proceedings against them were unlawful. They relied on a breach of Article 6 of the Convention (art. 6) in that they had been denied access to the criminal file and had been refused copies of the documents from the file.

10. In a judgment of 2 October 1991 the police court upheld their submissions and set aside the proceedings against the applicant and his father on the ground that the rights of the defence had been infringed. It declared inadmissible applications by the National Field Sports Board and

the two game wardens to join the proceedings as civil parties. It gave the following reasons:

"...

Article 6 (art. 6) of the European Convention on Human Rights provides that everyone charged with a criminal offence has the right, among other things, to be informed in detail of the accusation against him, to have adequate time and facilities for the preparation of his defence, and to defend himself in person. In the instant case the public prosecutor's office in no way disputed the fact that the defendants were not allowed access to their case file when they requested it prior to the hearing. That the defendants attempted to secure such access is confirmed by two notes of 25 and 26 July 1991, although these documents refer only to the refusal to hand over copies.

The defendants should have been allowed access to their case file in order to prepare their defence. The value of such access is sufficiently demonstrated by the use legal representatives make of it. No discrimination adversely affecting the rights of the defence can be justified by the fact that a defendant prefers to conduct his own defence. Furthermore, however detailed the inquiry into the facts carried out at the hearing is, the defendant cannot be deprived of the opportunity to see and actually to familiarise himself with the documents concerning him.

It follows that the rights of the defence were infringed during the criminal proceedings against Mr Gérard Foucher and Mr Frédéric Foucher and that the proceedings must accordingly be set aside."

B. The proceedings in the Caen Court of Appeal

11. On 30 October 1991 the public prosecutor's office and the civil parties appealed against this judgment.

12. On 2 March 1992 a summons was served on the applicant at his home. He did not, however, appear at the hearing in the Caen Court of Appeal on 16 March 1992.

According to him, his mother went to the registry of the Court of Appeal to obtain information on how to gain access to the case file, but met with the registrar's refusal.

13. In a judgment of 16 March 1992, given after proceedings that were adversarial in the case of the applicant's father and deemed to have been adversarial in the case of the applicant, the Court of Appeal reversed the judgment of 2 October 1991 and refused the application for the proceedings to be set aside for having violated the rights of the defence. It ruled as follows:

"...

Gérard Foucher [the applicant's father] has pleaded that the proceedings should be set aside as they are in breach of the rights of the defence.

He argued that he had not had access to the case file in order to prepare an effective defence and that this constituted a violation of the European Convention on Human Rights.

However, although Article [6] (art. 6) of that Convention states that everyone charged with a criminal offence has the right, among other things, to be informed in detail of the nature and cause of the accusation against him, the right to have adequate time and facilities for the preparation of his defence and the right to defend himself in person, the Convention does not require that the case file be made available to the applicant himself.

Moreover, Gérard Foucher was informed, by means of the summons in due form, of the offences with which he was charged and of the legal provisions relating thereto.

Under these circumstances the objection that the proceedings were vitiated fails."

Relying on the official report drawn up on 13 February 1991 by the two game wardens and on the statements made by another hunter, the Court of Appeal fined the applicant and his father FRF 3,000 each for insulting the game wardens.

C. The proceedings in the Court of Cassation

14. On 10 April 1992 the applicant lodged an appeal on points of law against the judgment of 16 March 1992. In his grounds of appeal, which he drafted himself, he cited Article 6 of the Convention (art. 6). His father did not appeal.

15. On 15 March 1993 the Court of Cassation (Criminal Division) dismissed the applicant's appeal on the following ground, among others:

"In holding that the European Convention for the Protection of Human Rights and Fundamental Freedoms did not require that the case file be made available to the defendant himself, and that he had been informed, by means of the summons in due form served on him, of the charges against him and the relevant legal provisions, the Court of Appeal did not breach the provisions of that Convention."

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant Articles of the Code of Criminal Procedure concerning institution of proceedings in the police court and the rules of evidence as regards minor offences are as follows:

Article 531

"Cases concerning offences within the jurisdiction of the police court shall be brought before it by referral from the investigating authority, by the parties' voluntary appearance or by the direct committal of the defendant and of the person civilly liable for the offence."

Article 537

"Minor offences shall be proved by official reports or, where there are no such reports, or in support thereof, by evidence taken from witnesses.

Save where the law provides otherwise, official reports by law-enforcement officers or their deputies, or by public servants responsible for carrying out certain police duties and authorised by law to draw up reports of minor offences, shall be good evidence in the absence of proof to the contrary.

Proof to the contrary must be established by either written or witness evidence."

A. Representation in court by a lawyer

17. According to the Code of Criminal Procedure, it is only compulsory for a defendant to be represented by a lawyer in the Assize Court (Article 317). In all other criminal courts the person placed under investigation - Law no. 93-2 of 4 January 1993 reforming criminal procedure substituted the expression "mise en examen" (placing under judicial investigation) for "inculpation" (charging) - can choose whether or not to be represented by a lawyer.

B. Access to the case file and the release of documents it contains

1. Lawyers

18. There are no regulations in the Code of Criminal Procedure governing consultation of the case file or the release of documents to lawyers except in relation to the investigation:

Article 114, third and fourth paragraphs (as amended by Law no. 93-2 of 4 January 1993 and Law no. 93-1013 of 24 August 1993)

"The case file shall be made available [to lawyers] at least four working days prior to each examination of the person under investigation or each interview with the civil party. Following the first appearance of the person under investigation or the first interview with the party claiming damages the case file shall likewise be made available to lawyers at any time on working days, in so far as this does not interfere with the smooth running of the investigating judge's office. Pursuant to the final paragraph of Article 80-1, the case file shall be made available to the lawyer, in so far as this does not interfere with the smooth running of the investigating judge's office, fifteen days after dispatch of the registered letter or after serving of the statement of charges, where a first appearance has not been made in the interim.

Following the first appearance or the first hearing, the parties' lawyers may request, at their expense, copies of the documents, or parts of documents, in the case file, exclusively for their own use and subject to a ban on copying."

Article 197, third paragraph

"During this period, the case file shall be lodged with the registry of the Indictment Division and shall be made available to the accused's counsel and to the civil parties. On a written request, they shall receive copies forthwith, at their expense. These copies may not be made public."

19. In a judgment of 30 June 1995 (Recueil Dalloz Sirey 1995, JP 417) the Court of Cassation (full court) clarified the scope of Article 114, fourth paragraph, of the Code of Criminal Procedure as regards a preliminary inquiry:

"However it is clear from both Article 114, paragraph 4, of the Code of Criminal Procedure, which is not contrary to the provisions of Article 6-3-b of the Convention (art. 6-3-b) already cited, and from Article 160 of the decree of 27 November 1991 governing the lawyers' profession that, although a lawyer is authorised to receive copies of the investigation file and may examine these in the presence of his client in order to prepare his defence, he may not, on the other hand, entrust his client with these documents which he received `exclusively for his own use' and which must remain subject to the requirement of confidentiality of the investigation."

2. The parties and other persons

20. In police court proceedings, there are no particular rules governing consultation of the case file at the registry. However, the Code of Criminal Procedure has two Articles governing the release of documents to the parties and to others:

Article R. 155

"In proceedings relating to serious crimes or major or minor offences, and without prejudice to the provisions of Articles 91 and D.32 (where applicable), the following documents may be released to the parties at their expense:

1. At their request, a copy of the criminal complaint filed by the victim or a third party, `orders that have become final, judgments and fixed penalty and enforcement orders provided for under Article L. 27-1, paragraph 2, of the Highway Code'.

2. With the authorisation of the Public Prosecutor or Principal Public Prosecutor (as applicable), a copy of any of the other documents on the file, including those relating to an inquiry resulting in a decision to take no further action."

Article R. 156

"In proceedings relating to serious crimes or major or minor offences, no copy of any document other than judgments, final fixed penalty orders and enforcement orders may be released to any person not party to the proceedings without the authorisation of the Public Prosecutor or the Principal Public Prosecutor (as applicable), including those documents relating to an inquiry resulting in a decision to take no further action.

However, in the cases referred to in this Article and in the previous Article the authorisation of the Principal Public Prosecutor is required where the documents sought have been filed with the court registry or relate to proceedings terminated by a finding that there was no case to answer or to a case which is to be heard in camera.

In the cases referred to in this Article and the previous Article, where authorisation is withheld, the judicial officer concerned shall give notice of his decision in due form and shall state the reasons for his refusal."

21. In a judgment of 12 June 1996 reproduced by the Government in the annex to their memorial the Court of Cassation (full court) gave a new interpretation of the Articles in question, based on Article 6 para. 3 of the Convention (art. 6-3), in relation to proceedings in which the case has already been sent for trial:

"Articles 114 and 197 of the Code of Criminal Procedure, according to which only the parties' lawyers are entitled to receive a copy of the documents contained in the file of a case under investigation, are not applicable to proceedings where the case has already been sent for trial, which are therefore not subject to the rule of confidentiality of the inquiry or investigation laid down in Article 11 of the same Code.

Everyone charged with a criminal offence thus has the right, under Article 6 para. 3 (art. 6-3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, not to the immediate communication of the documents on the file but to the release, at his expense and, where appropriate, acting through his lawyer, of copies of the documents submitted to the court he has been summoned to appear before.

According to the impugned judgment, René Pascolini was directly committed before the criminal court for misleading advertising;

Having refused the assistance of an officially appointed defence counsel and as he had not been authorised by the public prosecutor's office to receive a copy of all the evidence in the case file, before putting forward any defence on the merits the defendant raised an objection complaining that the proceedings were vitiated because they were in breach of Article 6 (art. 6) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and asked the trial court to order that he receive a copy of the case file.

The appellate court's judgment upheld the lower court's decision and dismissed René Pascolini's objection and request, both repeated on appeal. Referring to new grounds and to grounds cited from the earlier decision, it stated that it had not been established that failure to issue copies of the documents on the case file to the defendant constituted an infringement of the rights of the defence where lawyers, successively appointed to act for the defendant who had inspected the case file and obtained a copy of it had suggested the defendant consult it in their presence, an offer the latter had declined. It found that the provisions of the Convention cited (art. 6) did not require that the defendant receive a copy of the case file where he could gain access to it through the intermediary of a lawyer. It also stated that the caution observed in issuing copies to the parties could be justified by the 'requirements of civil liberties and of security'.

However, in ruling in this way and given that the relevant provisions of Article R. 155-2 of the Code of Criminal Procedure, requiring the authorisation of the public prosecutor's office for the release of copies of the documents on the case file to the parties, may not impede the exercise of the rights of the defence, the Court of Appeal misdirected itself as to the provisions and principles reiterated above.

The judgment should therefore be quashed."

PROCEEDINGS BEFORE THE COMMISSION

22. Mr Foucher applied to the Commission on 16 April 1993. He relied on Article 6 para. 3 of the Convention (art. 6-3) and complained of an infringement of the rights of the defence in that he had not been able to have access to his case file or to obtain a copy of the documents in it.

23. The Commission declared the application (no. 22209/93) admissible on 4 April 1995. In its report of 28 November 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 3 taken together with Article 6 para. 1 of the Convention (art. 6-3+6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT

24. In their memorial the Government asked the Court to "rule that there has been no violation of Article 6 para. 3 taken together with Article 6 para. 1 of the Convention (art. 6-3+6-1) as the complaint is ill-founded".

25. The applicant asked the Court to hold "that there has been a violation of Article 6 paras. 1 and 3 of the Convention (art. 6-1, art. 6-3)".

[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-II), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARAS. 1 AND 3 OF THE CONVENTION (art. 6-1, art. 6-3)

26. Mr Foucher complained of an infringement of the rights of the defence in that, in criminal proceedings, he had not been able to have access to his case file or to obtain a copy of the documents in it. He relied on Article 6 para. 1 of the Convention taken together with Article 6 para. 3 (art. 6-3+6-1), the relevant parts of which provide:

> "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:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person ..."

He maintained that consulting the documents in the case file before the hearing was a necessary step in preparing a proper defence. As he had not had access to his case file, he had been unable to challenge the game wardens' official report on him, which was the sole basis for his conviction by the Caen Court of Appeal.

27. The Commission too considered that denying the applicant access to the case file, when he was not even represented by a lawyer, constituted a substantial impairment of the right to a fair trial in view of the breach of the principle of equality of arms and the restriction in the rights of the defence which it entailed.

28. The Government took the opposite view. They acknowledged that in principle the application was compatible ratione materiae with the Convention, regard being had to the judgment of the Court of Cassation of 12 June 1996, which had departed from earlier decisions concerning the communication of documents from the case file to the defendant where there had been no preliminary inquiry (see paragraph 21 above). On the other hand, the application was ill-founded on the facts in that the applicant could not claim to have suffered an infringement of his right of access to the criminal file as he had not sought to exercise this right on appeal. Mr Foucher's failure to do so and to attend the hearing of the Court of

Appeal represented two omissions on his part from which the Court should draw the appropriate conclusions.

29. The Court notes at the outset that it is not disputed that this case concerns the determination of a "criminal charge"; Article 6 para. 1 (art. 6-1) is therefore applicable.

30. It observes further that the guarantees in paragraph 3 of Article 6 (art. 6-3) are specific aspects of the right to a fair trial set forth in general in paragraph 1 (art. 6-1). For this reason, it considers it appropriate to examine this complaint under the two provisions taken together (art. 6-3+6-1) (see, in particular, the Pullar v. the United Kingdom judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, p. 796, para. 45).

31. It is necessary in the present case to ascertain whether the fact that Mr Foucher was denied access to his criminal file and prevented from obtaining a copy of the documents in it constituted a violation of Article 6 para. 1 of the Convention taken together with Article 6 para. 3 (art. 6-3+6-1).

32. The Court disagrees with the Government's contention that the applicant cannot complain of a refusal to grant him access to his criminal file and to release to him copies of the documents in it inasmuch as he had not at any time made such a request to the Principal Public Prosecutor at the Caen Court of Appeal.

Admittedly, although Article R. 155 of the Code of Criminal Procedure made provision for this possibility (see paragraph 20 above), Mr Foucher did not make such a request during the appeal proceedings and, moreover, did not appear at the hearing in the Court of Appeal (see paragraph 12 above).

It is not, however, in dispute that he was denied access at first instance by the public prosecutor, although the Argentan Police Court annulled the proceedings against him on the ground that they were in breach of Article 6 of the Convention (art. 6) (see paragraphs 8-10 above).

The decisive factor in this case is that the Caen Court of Appeal, which set aside the police court's judgment and dismissed the applicant's objection that the proceedings were vitiated, sentenced him solely on the basis of the game wardens' official report (see paragraph 13 above).

The Court of Cassation, to which the applicant appealed on points of law, upheld the Court of Appeal's judgment, inter alia, on the ground that "the European Convention for the Protection of Human Rights and Fundamental Freedoms did not require that the case file be made available to the defendant himself ..." (see paragraph 15 above).

Thus neither the Caen Court of Appeal (on 16 March 1992) nor the Court of Cassation (on 15 March 1993) adopted the line of argument put forward by the Government before the Convention institutions. On the contrary, they took it as settled that Mr Foucher had not been able to have access to his case file or to obtain a copy of the documents in it and considered that there was no requirement to that effect under Article 6 of the Convention (art. 6).

33. That being so, it remains to consider whether, especially during the appeal proceedings, there was an infringement of the applicant's defence rights and of the principle of equality of arms.

34. The Court reiterates in this connection that according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case in conditions that do not place him at a disadvantage vis-à-vis his opponent (see, in particular, the Bulut v. Austria judgment of 22 February 1996, Reports 1996-II, pp. 380-81, para. 47).

35. In the instant case, three considerations are of crucial importance.

Firstly, Mr Foucher chose to conduct his own case, which he was entitled to do both under the express terms of the Convention and under domestic law (see paragraph 17 above). The Court's reasoning in the cases of Kamasinski and Kremzow to the effect that it is not incompatible with the rights of the defence to restrict the right to inspect the court file to an accused's lawyer does not therefore apply (see the Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, p. 39, para. 88, and the Kremzow v. Austria judgment of 21 September 1993, Series A no. 268-B, p. 42, para. 52).

Secondly, as the applicant had been committed directly for trial in the police court without a preliminary investigation, the question of ensuring the confidentiality of the investigation did not arise.

Lastly, the applicant's conviction by the Caen Court of Appeal was based solely on the game wardens' official report, which, under Article 537 of the Code of Criminal Procedure (see paragraph 16 above), was good evidence in the absence of proof to the contrary.

36. The Court, like the Commission, therefore considers that it was important for the applicant to have access to his case file and to obtain a copy of the documents it contained in order to be able to challenge the official report concerning him.

As the Argentan Police Court rightly said, "the defendants should have been allowed access to their case file in order to prepare their defence [as] the value of such access is sufficiently demonstrated by the use legal representatives make of it ..." (see paragraph 10 above).

As he had not had such access, the applicant had been unable to prepare an adequate defence and had not been afforded equality of arms, contrary to the requirements of Article 6 para. 1 of the Convention taken together with Article 6 para. 3 (art. 6-3+6-1).

37. Finally, the Court notes that the Court of Cassation itself, subsequent to its ruling of 15 March 1993 in the present case (see paragraph 15 above) reversed its previous case-law concerning communication of the documents from a file where the defendant has already been sent for trial. In a judgment of 12 June 1996 (see paragraph 21 above) it held:

"Everyone charged with a criminal offence thus has the right, under Article 6 para. 3 (art. 6-3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, not to the immediate communication of the documents on the file but to the release, at his expense and, where appropriate, acting through his lawyer, of copies of the documents submitted to the court he has been summoned to appear before.

..."

38. Regard being had to all the circumstances of the case, the Court finds that there has been a violation of Article 6 para. 1 of the Convention taken together with Article 6 para. 3 (art. 6-3+6-1).

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

39. Article 50 of the Convention (art. 50) provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage and costs

40. The applicant sought compensation for both pecuniary and non-pecuniary damage and the reimbursement of costs and expenses incurred in the domestic courts and before the Convention institutions. He claimed a total of FRF 100,000.

41. The Government considered that the Court's finding of a violation would constitute sufficient compensation for the non-pecuniary damage. They made no submissions as to the costs.

42. The Delegate of the Commission asked the Court to award the applicant just satisfaction, but left it to its discretion to assess the amount.

43. In the matter of the alleged pecuniary damage, the Court cannot speculate as to the outcome of the proceedings had there not been a violation of the Convention.

It considers further that the present judgment in itself constitutes sufficient just satisfaction for the applicant's non-pecuniary damage.

In respect of costs and expenses and making its assessment on an equitable basis, the Court awards Mr Foucher FRF 15,000 less FRF 11,357 already paid in legal aid before the Convention institutions.

B. Default interest

44. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.87% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 of the Convention taken together with Article 6 para. 3 (art. 6-3+6-1);

2. Holds that the present judgment in itself constitutes sufficient just satisfaction as regards the applicant's non-pecuniary damage;

3. Holds that:
   (a) the respondent State is to pay the applicant, within three months, 15,000 (fifteen thousand) French francs in respect of costs and expenses less 11,357 (eleven thousand three hundred and fifty-seven) French francs already paid in legal aid; and
   (b) simple interest at an annual rate of 3.87% shall be payable on this sum from the expiry of the above-mentioned three months until settlement;

4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 March 1997.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar