



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

COURT (CHAMBER)

CASE OF CROISSANT v. GERMANY

(Application no. 13611/88)

JUDGMENT

STRASBOURG

25 September 1992

In the case of Croissant v. Germany*,

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr B. WALSH,

Mr J. DE MEYER,

Mr S.K. MARTENS,

Mr J.M. MORENILLA,

Mr F. BIGI,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 27 March and 28 August 1992,

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

PROCEDURE

1. The case was referred to the Court on 19 April 1991 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13611/88) against Germany lodged with the Commission under Article 25 (art. 25) by Mr Klaus Croissant, a German national, on 3 December 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Germany recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c).

* The case is numbered 62/1991/314/385. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The President gave the lawyer leave to use the German language (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr R. Bernhardt, the elected judge of German nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 April 1991 the President drew by lot, in the presence of the Registrar, the names of the seven other members, namely Mr F. Gölcüklü, Mr J. Pinheiro Farinha, Mr B. Walsh, Mr R. Macdonald, Mr J. De Meyer, Mr S.K. Martens and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr F. Matscher and Mr J.M. Morenilla, substitute judges, replaced respectively Mr Pinheiro Farinha, who had resigned and whose successor had taken up his duties before the hearing (Rules 2 para. 3 and 22 para. 1), and Mr Macdonald, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the German Government ("the Government"), the Delegate of the Commission and the representative of the applicant on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the registry received, on 13 September 1991, the applicant's memorial and, on 16 September, the Government's. On 11 October 1991 the Secretary to the Commission informed the Registrar that the Delegate would submit her observations at the hearing. On 16 March 1992 he filed several documents.

On 28 February 1992 the Chamber had decided, after considering the observations of the Agent of the Government and the Delegate of the Commission thereon, to reject a request by the applicant for the hearing of witnesses.

5. In accordance with the decision of the President - who had also given the representatives of the Government leave to plead in German (Rule 27 para. 2) - the hearing took place in public in the Human Rights Building, Strasbourg, on 23 March 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J. MEYER-LADEWIG, Ministerialdirigent,

Federal Ministry of Justice,

Agent,

Mr U. HEISLER, President

of the Stuttgart Regional Court,

Mr G. UHINK, Principal Administrator,

Counsel;

- for the Commission

Mrs G.H. THUNE,

Delegate;

- for the applicant

Mr K. ESCHEN, Rechtsanwalt,

Counsel.

The Court heard addresses by Mr Meyer-Ladewig for the Government, by Mrs Thune for the Commission and by Mr Eschen for the applicant, as well as their replies to questions put by the Court. The Government and the applicant filed several documents.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Klaus Croissant, a German national, is a lawyer who practises in Berlin. At the material time, he was facing criminal proceedings in the Stuttgart Regional Court (Landgericht) in connection with his activities as the lawyer of various members of the "Red Army Faction" (RAF).

A. Designation of court-appointed lawyers

7. Initially he was represented by two lawyers of his choice: Mr Baier, practising in Mannheim, and Mr Kempf, having his office in Frankfurt. Subsequently, on 2 August 1976, they were designated, at his request, to represent him as court-appointed defence counsel. The applicant had, moreover, chosen three further lawyers to assist in his defence, two of whom were French, but they did not participate in the criminal proceedings in question here.

8. On 11 January 1978, on an application by the prosecuting authority, the President of the Regional Court designated as third court-appointed defence counsel, Mr Hauser, a lawyer practising in Stuttgart.

9. Mr Croissant raised objections both to the appointment of a third defence counsel itself and to the choice of the person concerned. He objected in particular that Mr Hauser was a member of the Social Democratic Party (SPD), while he was fundamentally opposed to that party. He requested either that the decision appointing Mr Hauser be annulled or that the latter be replaced by Mr Künzel, who also had his office in Stuttgart.

Mr Hauser for his part asked to be relieved of his duties in the case.

The Regional Court dismissed both applications on 1 March 1978.

On the first point it considered that it had been necessary to appoint a third defence counsel to ensure that the trial would take its course according to the principles laid down in the Code of Criminal Procedure and, in any event, that the accused was adequately represented throughout the trial,

having regard to its possible length and to the size and complexity of the case.

As to the other objection, it agreed that when selecting a lawyer to be appointed as defence counsel the court should, as a rule, endeavour to choose a lawyer in whom the defendant places confidence. This rule was formulated for cases where the defendant has no defence counsel and the court must appoint one. However, at Mr Croissant's request, the court had appointed two defence counsel who enjoyed his full confidence. Nevertheless, when selecting the third court-appointed defence counsel, the court had not only taken into consideration which lawyer would offer the best guarantees for a proper and effective defence, having regard to the subject-matter of the trial, the factual and legal complexity of the case and the personality of the defendant. It had also tried to choose one in whom the defendant would probably be able to place confidence.

Taking into account all the circumstances which were relevant for assessing whether Mr Hauser was a suitable person to defend Mr Croissant, the court held that the fact that Mr Hauser was a member of the SPD did not justify revoking his appointment: in so far as the defendant might wish the defence to make a sharp attack on the politics of this party, the other court-appointed counsel offered all the guarantees. Mr Hauser too had expressed the opinion that he was in a position to appear for the defendant in spite of their political differences.

Finally, Mr Künzel was defending one of Mr Croissant's former employees in other proceedings and the possibility of a conflict of interests could not be ruled out.

10. On 6 March 1978 the Stuttgart Court of Appeal (Oberlandesgericht) upheld this decision. It recalled that, according to the case-law of the Federal Constitutional Court (Bundesverfassungsgericht), an appointment to act as defence counsel could and should only be revoked when its purpose - that is, to ensure that the accused will be adequately defended and the proceedings properly conducted - is seriously endangered. On similar grounds as the first-instance court, it held that Mr Croissant had not established that this requirement was met in respect of Mr Hauser's appointment.

As to the appointment of a third defence counsel, the court found nothing to criticise. To appoint a further defence counsel having his office within the Regional Court's jurisdiction had been objectively justified by reason of the length of the proceedings, which could not be predicted accurately, and the size and complexity of the case.

As to Mr Hauser's request to be discharged from the case, the court found that unjustified too. Neither Mr Croissant nor Mr Hauser maintained, nor was there anything to show, that the relations between them were so strained or they had quarrelled in such a way as to make a proper defence impossible.

11. Subsequently, Mr Croissant tried to secure the additional assistance of Mr Künzel, by choosing him as defence counsel, but to no avail. Under Article 137 para. 1 of the Code of Criminal Procedure, an accused may not be represented by more than three such lawyers (see paragraph 20 below) and he had already retained three counsel of his own choice (see paragraph 7 above).

At the trial, which lasted seventy-three days, the applicant was represented by the three court-appointed defence counsel.

B. The order to pay costs and its consequences

12. On 16 February 1979 the Stuttgart Regional Court convicted the applicant of supporting a criminal organisation and sentenced him to two years and six months' imprisonment; he was also barred from practising his profession for a period of four years and ordered to pay the costs and expenses, including those which he had been compelled to incur himself.

On 14 November 1979 the Federal Court of Justice (Bundesgerichtshof) dismissed Mr Croissant's appeal on points of law.

13. On 27 December 1979 the costs office (Gerichtskasse) of the Regional Court set the costs and expenses at DM 239,439.30, including DM 209,683.20 for the fees and disbursements of the three court-appointed defence counsel. In an additional bill (Kostenrechnung) of 15 April 1981 it fixed the final amount at DM 253,246.16, DM 218,863.17 of which represented the lawyers' fees and disbursements. The amount payable in respect of Mr Hauser was DM 63,012.79.

14. The applicant lodged an objection (Erinnerung) against this assessment, which he considered to be incompatible with Article 6 para. 3 (c) (art. 6-3-c) of the Convention. He argued that once free legal assistance had been granted no payment could subsequently be demanded, so that he was under no obligation to pay the court-appointed lawyers and in particular Mr Hauser, who had been imposed on him.

On 20 November 1986 the Regional Court dismissed the objection; it referred to the opinion which prevailed in German case-law and literature on the subject, which opinion had been endorsed by the Commission in a decision of 6 May 1982 (application no. 9365/81, Decisions and Reports 28, p. 229).

15. Mr Croissant lodged an appeal (Beschwerde) in the Stuttgart Court of Appeal, based on the same grounds. He stressed their particular relevance to Mr Hauser, who had been appointed against Mr Croissant's will.

On 30 April 1987 the appeal was allowed in respect of two minor items (DM 113,70 in total), but was dismissed as to the main issue. The Court of Appeal held that the designation of a third court-appointed defence counsel had corresponded to a pressing need - ensuring an adequate defence -, on account of the scope and complexity of the case and in view of the probable

duration of the trial. If the court, when making the appointment, had also purported to secure that the trial would take its legal course, it had rightly done so since that was a legitimate interest to be taken into account as well. As to the applicant's arguments based on Article 6 para. 3 (c) (art. 6-3-c) of the Convention, the court endorsed the reasons given by the Regional Court. It added that the financial means of the defendant are immaterial for deciding whether or not the court should appoint a defence counsel. The question whether a convicted person is able to pay only arises after the criminal proceedings have ended.

16. On 23 June 1987 the Federal Constitutional Court, sitting as a panel of three judges, refused to entertain Mr Croissant's constitutional appeal (Verfassungsbeschwerde), taking the view that it had no prospect of success. In the light of the Commission's case-law, the court considered that it did not follow from Article 6 para. 3 (c) (art. 6-3-c) of the Convention that legal assistance was definitively provided free. It held that a convicted person's obligation to pay costs and expenses derived from the fact that proceedings had been brought as a result of his own conduct. The principle of the "social state" (Sozialstaatsprinzip) and the right to a fair trial no doubt guaranteed that, where necessary, legal assistance be accorded to an indigent accused, but they did not require him to be definitively dispensed from paying the fees incurred. The law on legal costs and expenses made available other possibilities (arrangements for payment or stay of execution) to take effective account of the financial difficulties of the convicted person. Finally, the Court of Appeal's conclusion regarding the necessity of appointing Mr Hauser as the third lawyer (see paragraph 15 above) was coherent and in any event had not been arbitrary.

17. In 1985 the applicant had already requested an extension of the time-limit for payment (Stundung), but this was refused by the President of the Stuttgart District Court (Amtsgericht) on 8 February 1988. After a first appeal (Beschwerde) had failed, his further appeal (weitere Beschwerde) was allowed on 18 August 1989, when the Stuttgart Court of Appeal quashed the earlier decisions and remitted the matter to the District Court. It considered that a decision to grant such an extension was primarily intended to facilitate the rehabilitation of a debtor who had already served his sentence. It was accordingly necessary to take account of the appellant's argument that a rejection of his request would force him to make a declaration of assets (Offenbarungseid) and would hamper his efforts to resume practising as a lawyer. It was also necessary to bear in mind that the applicant had agreed to the inspection of his documents and accounts by a member of the Berlin Bar, in order to assess his income, and that the Federal Ministry of Justice had proposed to ask him to make a confidential statement under oath before a notary instead of a declaration of assets. Even though granting the extension would mean in reality that a large part of the debt would remain unpaid indefinitely, that did not justify a refusal; in any

event it was unlikely that the total amount could ever be recovered. It was therefore necessary to reconsider the question and to determine whether it was possible to authorise smaller payments by instalments.

18. As a result, the President of the District Court granted several extensions of the time-limit, on the most recent occasion until March 1992. However, in October 1989, on his own initiative, Mr Croissant started to pay DM 50 per month, on the condition that this sum not be used to pay the court-appointed lawyers.

19. In 1985, 1987 and 1988 he had unsuccessfully sought to have the debt cancelled. A fourth such request, filed on 1 October 1990, led to an order made by the President of the Court of Appeal on 10 July 1991. Whilst dismissing the remainder of the application, he reserved, pending the ruling of the European Court of Human Rights, his decision on the payment of the fees and expenses of the court-appointed lawyers.

II. THE APPLICABLE DOMESTIC LAW

20. The following provisions of the Code of Criminal Procedure concerning assistance by defence counsel are relevant in the present case.

Article 137

"(1) The accused (Beschuldigter) may be assisted by a lawyer at any stage of the proceedings. He may not be represented by more than three lawyers of his own choice.

(2) ..."

Article 140

"(1) The assistance of a defence counsel is necessary where:

1. the trial at first instance is conducted in the Court of Appeal or the Regional Court;

..."

Article 141

"(1) In the cases provided for in Article 140 (1) and (2), a defence counsel shall be appointed for an accused who has been officially charged before the court (Angeschuldigter) and is not yet represented by counsel, as soon as the accused is invited ... to make a statement on the indictment.

(2) Where the necessity of a defence counsel only becomes apparent at a later stage, one shall be appointed immediately.

(3) ...

(4) ..."

According to the case-law of the Federal Court of Justice and the Federal Constitutional Court, Article 141 (1) does not preclude a court from appointing, when it holds this to be necessary in the interests of justice, one or more defence counsel for an accused who is already represented by one or more counsel of his own choice.

Article 142

"(1) In so far as possible, the President of the court shall designate the lawyer to be appointed from among the lawyers admitted to plead in a court within the same jurisdiction. The accused shall be offered the opportunity of indicating a lawyer of his choice within a prescribed time-limit. Unless there are important reasons for not doing so, the President shall appoint the lawyer indicated by the accused.

(2) ..."

Under Articles 48 and 49 of the German Regulations on Lawyers (Bundesrechtsanwaltsordnung), a lawyer designated as court-appointed defence counsel is obliged to assume the defence, but may request that the appointment be revoked when there are weighty grounds for doing so.

Article 465

"1. The defendant shall bear the costs in so far as they ensue from proceedings brought on account of an offence for which he has been convicted ..."

21. The Land of Baden-Württemberg Law of 30 March 1971 on court costs provides as follows:

Article 7

"(1) The payment of legal costs and other debts provided for in Article 1 (1), nos. 5 to 9, of the Regulation on the recovery of costs ... of 11 March 1937 ... may be deferred where their immediate payment would cause exceptional hardship to the person liable to pay and if such a deferment does not jeopardise the debt ...

(2) The debts referred to in paragraph 1 may be partly or wholly remitted :

1. if this seems appropriate in the pursuit of aims serving the public good; 2. where payment entails exceptional hardship for the person liable to pay; 3. where this is equitable on other specific grounds.

The same applies in regard to the reimbursement or crediting of sums already paid.

(3) The competent Minister shall take the decision provided for in paragraphs 1 and 2. In certain categories of cases he may delegate this power, in whole or in part, to subordinate authorities."

PROCEEDINGS BEFORE THE COMMISSION

22. Mr Croissant lodged his application with the Commission on 3 December 1987. He relied on Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention and complained that he had been ordered to pay the fees and expenses of three court-appointed lawyers.

23. The Commission declared the application (no. 13611/88) admissible on 8 December 1989. In its report of 7 March 1991 (Article 31) (art. 31), it expressed the opinion that there had been no violation either in respect of the fees and expenses of Mr Baier and Mr Kempf (unanimously) or in respect of those of Mr Hauser (seven votes to four). The full text of its opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

24. The applicant asked the Court to find the fact that he was required to pay the costs of two lawyers appointed by the court with his consent and a third appointed essentially to ensure the continuance of the trial to be contrary to Article 6 para. 3 (c) (art. 6-3-c).

For their part, the Government invited the Court to find: "... that, in this case, the Federal Republic of Germany has not violated Article 6 (art. 6) of the Convention."

AS TO THE LAW

A. Introduction

25. Mr Croissant alleged a violation of Article 6 (art. 6) of the Convention. The paragraphs of that Article on which he relied - 3 (c) in conjunction with 1 (art. 6-3-c, art. 6-1) - provide as follows:

"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:

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 237-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

...

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

..."

His complaint was directed against the order requiring him to reimburse to the State the fees and disbursements of the three counsel officially appointed by the Stuttgart Regional Court to defend him, namely Mr Baier and Mr Kempf, at his request, and Mr Hauser, against his wishes ("the reimbursement order"). He submitted that this order:

(a) in so far as it related to the three counsel, violated the right of a defendant without sufficient means to pay for legal assistance to be given it free if the interests of justice so required, it being implicit that the costs thereof could not subsequently be recovered from him; and

(b) in so far as it related to Mr Hauser, raised the even more important issue of an accused's right to choose his own counsel, such right being an essential element in the notion of fair trial under Article 6 para. 1 (art. 6-1) as well as being explicitly confirmed by Article 6 para. 3 (c) (art. 6-3-c).

The Government contested these allegations. The Commission expressed the opinion that there had been no violation.

26. The applicant's submissions involve a series of interrelated issues, not all of which, in fact, fall within the compass of the case before the Court.

His general complaint regarding the reimbursement order raises the question whether it is compatible with Article 6 (art. 6) for the State to seek to recover from an accused, after he has been convicted, the fees and disbursements of one or more defence counsel who were appointed by the competent court on the ground that the interests of justice so required and who, in accordance with its order, provided him during his trial with assistance for which they did not charge him at the time. An analysis of this complaint reveals that attention must be given to both the initial appointment itself and the subsequent reimbursement order. The former raises - irrespective of the accused's means - issues under Article 6 (art. 6), especially as regards the meaning of the phrase "to defend himself in person or through legal assistance of his own choosing"; it will therefore be examined first, for if the appointment was incompatible with Article 6 (art. 6), the same would apply to a decision to recover the costs occasioned thereby.

B. The appointment of the lawyers

27. The applicant did not contest that German law empowered and obliged the Regional Court to appoint, even against his own wishes, one or

more lawyers to defend him if the interests of justice so required. Whilst not disputing that this condition was met as regards the nomination of Mr Baier and Mr Kempf, the applicant maintained that it was not as regards the nomination of Mr Hauser.

The requirement that a defendant be assisted by counsel at all stages of the Regional Court's proceedings (Article 140 of the Code of Criminal Procedure; see paragraph 20 above) - which finds parallels in the legislation of other Contracting States - cannot, in the Court's opinion, be deemed incompatible with the Convention.

Again, the appointment of more than one defence counsel is not of itself inconsistent with the Convention and may indeed be called for in specific cases in the interests of justice. However, before nominating more than one counsel a court should pay heed to the accused's views as to the number needed, especially where, as in Germany, he will in principle have to bear the consequent costs if he is convicted. An appointment that runs counter to those wishes will be incompatible with the notion of fair trial under Article 6 para. 1 (art. 6-1) if, even taking into account a proper margin of appreciation, it lacks relevant and sufficient justification.

28. The applicant submitted that the nomination of a third defence counsel in his case was unnecessary and lacked relevant and sufficient justification since its main aim was to convenience the court by ensuring that his trial proceeded without interruptions or adjournments.

The Court is not convinced by this argument. In the first place, avoiding interruptions or adjournments corresponds to an interest of justice which is relevant in the present context and may well justify an appointment against the accused's wishes. Moreover, the nomination of Mr Hauser had additional aims. It was based, according to the Regional Court's decision of 1 March 1978 (which was upheld by the Stuttgart Court of Appeal), on the need to ensure that Mr Croissant was adequately represented throughout his trial, having regard to its probable length and to the size and complexity of the case; the Regional Court stressed that its selection of Mr Hauser was grounded on its view that he possessed the qualifications called for by those special features (see paragraphs 9-10 above).

29. Whilst the appointment of Mr Baier and Mr Kempf obviously does not raise any problems as regards the applicant's right to be defended by counsel of his own choosing, the appointment of Mr Hauser does. The applicant emphasised that although the Regional Court knew that he had no confidence in Mr Hauser when it nominated him, the courts had refused to replace him by the lawyer proposed by the applicant (see paragraph 9 above).

It is true that Article 6 para. 3 (c) (art. 6-3-c) entitles "everyone charged with a criminal offence" to be defended by counsel of his own choosing (see the Pakelli v. Germany judgment of 25 April 1983, Series A no. 64, p. 15, para. 31). Nevertheless, and notwithstanding the importance of a

relationship of confidence between lawyer and client, this right cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where, as in the present case, it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel the national courts must certainly have regard to the defendant's wishes; indeed, German law contemplates such a course (Article 142 of the Code of Criminal Procedure; see paragraph 20 above). However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice.

30. In its decision of 1 March 1978, the Regional Court stressed that it had selected Mr Hauser because it considered that, having regard to the subject-matter of the trial, the complexity of the factual and legal issues involved and the defendant's personality, he offered the best guarantees of an adequate defence. Furthermore, it found that the reason advanced by the applicant for his being unable to place confidence in Mr Hauser was not valid; in this connection, it also had regard to the fact that the applicant himself had chosen the other two court-appointed lawyers (see paragraph 9 above). The Stuttgart Court of Appeal, which upheld the Regional Court's decision, added that Mr Hauser had been appointed because, unlike those two lawyers, he had his office within the Regional Court's jurisdiction (see paragraph 10 above); this would have had advantages, having regard to the expected length of the trial, in the event that they had been unable to attend. The appointment was also, the Court notes, in accordance with German law (Article 142 of the Code of Criminal Procedure; see paragraph 20 above).

Finally, in the opinion of the Regional Court there were valid reasons - namely a possible conflict of interests between Mr Croissant and one of his former employees - for refusing to designate Mr Künzel (see paragraph 9 above).

The grounds on which the national courts based their appointment of Mr Hauser and their rejection of the reasons advanced by the applicant in favour of its revocation are, in the Court's view, relevant and sufficient.

31. Furthermore, the Government maintained - and this was confirmed by Mr Croissant's counsel at the Court's hearing - that Mr Hauser took an active part in the defence and was closely involved with the other two counsel in planning the strategy to be adopted. Accordingly, his designation cannot be said to have adversely affected the applicant's defence.

32. To sum up, the appointment of the three lawyers in question cannot be held to have been incompatible with the requirements of paragraphs 3 (c) and 1 of Article 6 (art. 6-3-c, art. 6-1), taken together.

C. The reimbursement order

33. Unlike the rights embodied in other provisions of Article 6 para. 3 (art. 6-3) (for example, sub-paragraph (e) (art. 6-3-e) - see the Luedicke, Belkacem and Koç v. Germany judgment of 28 November 1978, Series A no. 29, pp. 16-17, para. 40), the right to free legal assistance conferred by sub-paragraph (c) (art. 6-3-c) is not absolute; such assistance is to be provided only if the accused "has not sufficient means to pay".

34. The applicant's complaints in this respect (see paragraph 25 (a) above) are formulated as though Mr Baier, Mr Kempf and Mr Hauser had been appointed pursuant to a grant of free legal assistance within the meaning of Article 6 para. 3 (c) (art. 6-3-c). However, that is not so. Under German law, whether one or more counsel should be appointed to defend an accused is a matter that is determined solely in the light of the requirements of the interests of justice, the question whether he has sufficient means to pay for legal assistance of his own choosing being wholly immaterial at that stage of the proceedings (see paragraph 15 above). Accordingly, the present case does not involve the question whether Article 6 (art. 6) in all circumstances prevents the State from subsequently seeking to recover the cost of free legal assistance given to a defendant who lacked sufficient means at the time of the trial.

35. This does not, however, dispense the Court from examining whether Article 6 (art. 6) has been violated in other respects.

In this context the Court recalls that under German law an accused who is acquitted is, irrespective of his means, under no obligation to pay either the court costs or the fees of the court-appointed lawyers; all these items are borne by the State. On the other hand, a convicted person is in principle always bound to pay the fees and disbursements of his court-appointed lawyers, this being held to be a normal consequence of the conviction.

It is only in the enforcement procedure that follows the final judgment that the financial situation of the convicted person plays a role; in this respect, it is immaterial whether he had sufficient means during the trial, only his situation after the conviction being relevant.

36. Such a system would not be compatible with Article 6 (art. 6) of the Convention if it adversely affected the fairness of the proceedings. However, it cannot be said that the system generally produces such a result or did so in the present case. As already stated, the appointment of the three defence counsel was compatible with the requirements of Article 6 (art. 6) (see paragraph 32 above). Accordingly, it is not incompatible with that provision that the applicant is liable to pay their fees. The national courts were entitled to consider it necessary to appoint them and the amounts claimed for them are not excessive.

37. Finally, it is not necessary to decide the question whether, under a system like the German one, it would be compatible with Article 6 para. 3

(c) (art. 6-3-c) of the Convention for the State to continue to seek full or partial reimbursement of expenses after the convicted person has established, in the enforcement proceedings, that he lacks sufficient means to bear the costs of his defence.

In this respect, the Government noted that, in accordance with the standard practice followed in the Land of Baden-Württemberg, a costs debtor who has a source of income will be granted a remission of costs only after he has made some payment towards them; where the costs are high, the greater part of them will often be remitted.

Taking into account the recent decisions of the Presidents of the Stuttgart Court of Appeal and District Court (see paragraphs 18-19 above), there is no reason to doubt that, should the applicant be able to establish that he cannot afford to pay the entire amount, the relevant legislation and practice will be applied (see paragraph 21 above). In this respect the Court considers it admissible, under the Convention, that the burden of proving a lack of sufficient means should be borne by the person who pleads it.

38. The Court concludes that the reimbursement order is not incompatible with Article 6 para. 3 (c) (art. 6-3-c). On this point too, there has been no violation of Article 6 (art. 6).

FOR THESE REASONS, THE COURT

1. Holds unanimously that the obligation for the applicant to pay the fees of the first two court-appointed lawyers did not violate Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c);
2. Holds by eight votes to one that the appointment of the third such lawyer and the obligation for the applicant to pay that lawyer's fees did not violate the said provisions either.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 September 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the separate opinion of Mr De Meyer is annexed to this judgment.

R.R.
M.-A.E.

DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

I have no difficulty in finding, in common with my fellow judges, that the Stuttgart Regional Court did not violate any of the applicant's fundamental rights in deciding that a third defence counsel should be appointed for him.

With reference to the choice of defence counsel, however, I consider that Mr Croissant was entitled to refuse the assistance of a lawyer in whom he had no confidence, just as the court was entitled to refuse, for valid reasons, to appoint the lawyer suggested by the applicant.

It appears that no efforts were made to secure the appointment as third defence counsel of a lawyer in whom Mr Croissant had confidence and in respect of whom there were no valid grounds to prevent the court appointing him. Moreover, it has not been shown that it was not possible to find a lawyer who complied with both these requirements.

In such circumstances it is not permissible that Mr Croissant should be obliged to reimburse the State for Mr Hauser's fees.