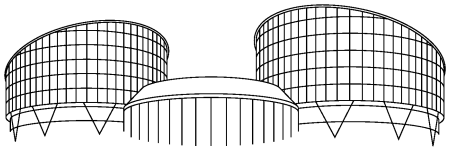

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF LHERMITTE v. BELGIUM

(Application no. 34238/09)

JUDGMENT

STRASBOURG

29 November 2016

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

In the case of Lhermitte v. Belgium,

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

Guido Raimondi, *President*,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Angelika Nußberger,
Vincent A. De Gaetano,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Paul Lemmens,
Helena Jäderblom,
Aleš Pejchal,
Faris Vehabović,
Branko Lubarda,
Yonko Grozev,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Gabriele Kucsko-Stadlmayer, *judges*,

and Françoise Elens-Passos, *Deputy Registrar*,

Having deliberated in private on 27 January 2016 and 21 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 34238/09) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Belgian national, Ms Geneviève Lhermitte ("the applicant"), on 5 June 2009.

2. The applicant was represented by Mr X. Magnée and Mr Z. Chihaoui, lawyers practising in Brussels. The Belgian Government ("the Government") were represented by their co-Agent, Ms I. Niedlispacher.

3. The applicant complained in particular, relying on Article 6 § 1 of the Convention, of the lack of reasons given in the Assize Court's judgment for finding her criminally responsible and convicting her.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 31 March 2015 a Chamber of that Section, composed of Işıl Karakaş, President, András Sajó, Nebojša

Vučinić, Helen Keller, Paul Lemmens, Robert Spano, Jon Fridrik Kjølbro, judges, and Stanley Naismith, Section Registrar, declared the application partly admissible and adopted a judgment in which it held by a majority that there had been no violation of Article 6 § 1 of the Convention. The joint dissenting opinion of Judges Sajó, Keller and Kjølbro was annexed to the judgment.

5. On 28 July 2015 the applicant requested that the case be referred to the Grand Chamber in accordance with Article 43 of the Convention, and the panel of the Grand Chamber accepted the request on 14 September 2015.

6. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicant and the Government each filed further written observations (Rule 59 § 1) on the merits.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 27 January 2016 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms I. NIEDLISPACHER, Federal Justice Department,
co-Agent of the Government, *Agent*;

(b) *for the applicant*
Mr X. MAGNÉE, of the Brussels Bar,
Mr Z. CHIHAOUI, of the Brussels Bar, *Counsel*.

The Court heard addresses by them and replies to the questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1966. She is currently detained in Forest-Berkendael Prison.

10. On 22 September 1990 the applicant married B.M., whom she divorced after the events to which the application relates. According to her explanations, since 1983 B.M. had been living with Dr M.S., a man fifteen years his elder, who had taken him in following B.M.'s arrival from Morocco, providing him with a home and paying for his studies.

11. The applicant and her husband had five children. In 1992, shortly after the birth of her first child, the applicant began suffering from

depression and stopped working as a French and history teacher, only returning for a few months in 1993. Dr M.S. certified her unfit for work on account of depression and asthenia. Subsequently, her insurance company's medical adviser confirmed that she was unfit for work on account of depression. In October 1996 a report by a court-appointed psychiatrist, which was later endorsed by the Employment Tribunal, diagnosed her as suffering from "recurrent endogenous anxiety and depression, with a slightly destabilised basic personality", rendering her more than 66% unfit for work. The expert concluded as follows:

> "... social contact feeds a sense of persecution and interpretative paranoia. The patient is socially withdrawn and has a tendency to retreat into herself. When faced with anxiety-inducing situations, the patient regresses emotionally, retreats into herself and takes refuge in passive-receptive and hypochondriac behaviour. On account of her intrinsic sensitivity, her anxiety may be combined with reactive depression. To conclude, we are confronted with a fragile, sensitive and anxious personality, with feelings of abandonment and phobic and obsessional components, who is likely, in situations of anxiety, to regress emotionally, to withdraw into herself and to develop various manifestations of anxiety, persecution and depression."

12. The applicant and B.M. lived in a house which had been bought in their name but paid for by Dr M.S. The applicant's husband worked part-time as Dr M.S.'s administrative assistant.

13. On 25 June 2004, on the recommendation of Dr M.S., who was her general practitioner, the applicant consulted a psychiatrist, D.V., who prescribed an antidepressant, sleeping tablets and anti-anxiety medication. Dr D.V., who had suggested that the applicant undergo psychiatric monitoring, saw her again on 4 February 2005, among other occasions, and wrote to M.S. recommending that he prescribe her a new antidepressant, as well as sleeping tablets and anti-anxiety medication. The applicant consulted D.V. once a month between February 2005 and the summer of 2006. The latter noted that the applicant appeared to be "always very tense and suffering from nervous exhaustion, constituting all the hallmarks of rumination" and that she showed "symptoms of social withdrawal and abnormal exhaustion during household tasks". In the spring of 2006 the applicant reported to D.V. that she felt isolated from her own family. From September 2006 she saw him every three weeks. In December 2006 D.V. successively prescribed the applicant two types of sleeping tablets. On 12 January 2007 she linked her exhaustion to the fact that she could not bear Dr M.S.'s presence, and on that occasion D.V. noted "a feeling of dependence" on M.S. financially, "a feeling of insecurity" and "a feeling towards that person [M.S.] which was one of intrusion, of having an unwelcome person under her roof, and also a great deal of ambivalence".

14. Dr D.V. saw the applicant again on 30 January and 9 and 13 February 2007. On the last-mentioned date the applicant wrote him a letter, which read:

> "Doctor, I don't feel very well when I wake up, I have trouble getting out of bed and I have stomach cramps. I have to get up though because I have diarrhoea every morning. I have this big knot. The whole of my left arm is frozen. I feel so sad, deeply sad. I can no longer manage a coffee in the morning. I feel very weak and lacking energy. I am afraid all the time. I am afraid of myself. I am afraid of the future. When I walk down the street, I am afraid. I don't have the courage. I don't know where to find the courage and I am tired of it all. I don't want to believe in a better future. I am at a dead end. I have been to a shop. I went to see if they had a very sharp meat knife. I don't know how I am going to tell my husband all this, that I don't feel well and that I have always kept it hidden that I felt so bad about myself and in my head and that I was taking medication. Please do something for me. I am being crushed by a mass of bad feelings. I have never felt so vulnerable. I feel unwell during the night. I often wake up and think. Ms Lhermitte ..."

15. In February 2007 the applicant mentioned sharp knives to D.V. on one or two occasions. D.V. interpreted this as "an impulse phobia". He saw her again on Friday 23 February 2007, noting that the applicant remained "extremely preoccupied as well, in the absence of her husband who [had] gone to Morocco again, and [found] herself having to deal alone with her uneasy feelings towards [M.S.]".

16. Early in the morning of 27 February 2007, the day before the incident, the applicant went to Dr D.V.'s practice and delivered a second letter which she had just written. The letter read as follows:

> "Dr [V.], you don't have much time. I have not felt well these last few days. I'm having dark thoughts. They are suicidal thoughts which are going to carry me away and I will take my children with me. It's a daily struggle. My friend [V.G.] is supporting me. There is no solution to my problem. I feel walled up. I feel like a prisoner. I no longer have the strength. I don't think my husband will save me because whichever way you look at it, he is in a favourable position. He is coming home tomorrow evening but I can't tell him of all my pain and distress. The family situation cannot be turned around. I have already had suicidal thoughts in the past. I imagine scenarios which are both true and realistic and I know I am capable. This is not a game. Sorry to take up your time! Ms Lhermitte ..."

17. Later that day, in the early afternoon, the applicant telephoned Dr D.V.'s practice to check that her letter had actually been received.

18. The applicant's letters addressed to Dr D.V. dated 13 and 27 February 2007 were not included in the file on the criminal investigation. D.V. later indicated that they had not formed part of the applicant's medical records.

19. On 28 February 2007 the applicant left a final letter, together with a bag of jewellery, in the letterbox of her friend and confidante V.G. The letter read as follows:

> "My dear friend [V.],
>
> I have cut off my phone and I am now starting to write this letter.
>
> I hope you will not be shocked by what I'm going to write.
>
> You must show it to [Dr D.V.] who will be at Érasme [hospital] on Friday morning at 9. He will be able to help you and explain what you explained to me so kindly when

> you came to my house. I don't have the courage to get things moving and I am completely frozen and paralysed with fear because there is no solution to my problem. You have always opened your door to me and my children and have been a ray of sunshine in our life, and I will thank you forever. I have decided to go a long way away with the children forever. One day, you'll see, we'll meet again but I don't regret this final solution.
>
> Please let my sister Mireille ... and my other sister Catherine ... know. Please forgive me. I beg my sisters to forgive me if I have hurt them. I can no longer bear this situation, because my husband is blind and deaf and despite that, he is happy in this situation.
>
> [M.S.] is a bastard who has ruined my life and robbed me of my privacy with my husband and children. I left the hell of my parents' home only to fall into another hell. ..."

20. The applicant ended her letter by asking her friend to share her jewellery with her two sisters. She also left a voicemail message on V.G.'s mobile phone – in a voice which the investigating officers later described as "trembling" and "hesitant" – telling V.G. that she had left a letter and a present in her letterbox and asking to be "forgiven", before saying "goodbye".

21. Afterwards, using two knives which she had stolen from a department store, the applicant killed her five children one by one before attempting suicide.

22. After writing the message "call the police" on a sheet of paper stuck to her front door, she telephoned the emergency services to say that she had killed her five children and to report her suicide attempt. When the police, the ambulance crew and the medical services arrived at the scene, they found the applicant, who was injured, and the bodies of the five children with their throats slit.

23. When the applicant was admitted to the intensive-care unit on the day of the incident, the doctor treating her noted "depressive, self-destructive thoughts against a background of psychotropic, anti-anxiety and antidepressant medication". During her initial police interview, the applicant had explained that she had acted in a fit of despair caused by her family's dependence on Dr M.S.

24. On 1 March 2007 an investigating judge at the Nivelles Court of First Instance charged the applicant with the intentional and premeditated homicide of her five children. The applicant was also placed in pre-trial detention.

25. Forensic medical reports produced between 12 March and 31 December 2007 concluded that the five homicides had been committed in a relatively short time – about ten minutes in each case – and that, in view of the speed at which the events had occurred, they were the result of a preconceived plan. In addition, toxicological analyses carried out on blood samples taken from the applicant confirmed that she had only been taking a combination of anti-anxiety medication and sleeping tablets, the plasma

levels detected being described as subtherapeutic – in other words, very low.

26. The investigating judge ordered several psychological reports. Two psychologists examined the applicant and submitted their respective reports on 30 October and 8 November 2007. They both concluded that the applicant was suffering from inner fragility requiring massive, rigid defences to preserve a perfect facade. She had developed a maternal omnipotence and a lack of psychological distance between the children and herself. Thus, by killing her children – love-objects in whom she had over-invested – the applicant was killing herself both as a person and as a mother.

27. A psychiatric assessment was also ordered by the investigating judge, who appointed a panel of three psychiatrists, Drs G., B. and M. The panel of experts examined the applicant and drew up a report dated 30 October 2007, in which they concluded:

> "We consider that [the applicant] was in a severe state of anxiety and depression which encouraged her to act as she did and profoundly impaired her judgment, without destroying it altogether.
>
> ...
>
> The accused was not suffering at the time of the events, and is not currently suffering, from a mental disorder or a severe mental disturbance or defect making her incapable of controlling her actions."

28. In an order of 17 June 2008 the Indictments Division (*chambre des mises en accusation*) of the Brussels Court of Appeal, upholding an order made by the investigating judge on 19 May 2008, committed the applicant to stand trial in the Assize Court for the following offence:

> "... in Nivelles, on 28 February 2007,
>
> having knowingly, intentionally and with premeditation, killed the following persons:
>
> - [Y.M.], born on 13 August 1992;
>
> - [N.M.], born on 13 February 1995;
>
> - [My.M.], born on 20 April 1997;
>
> - [Mi.M.], born on 20 May 1999;
>
> - and [Me.M.], born on 9 August 2003."

29. The indictment of 19 October 2008, drawn up by the Principal Public Prosecutor, ran to fifty-one pages and gave an account of the precise sequence of events, the steps taken and evidence obtained during the investigation, and the forensic medical reports; a substantial part of it also focused on the applicant's personal history and family life and the motives and reasons that had prompted her to carry out the killings, particularly in the light of the expert assessments of her psychological and mental state.

30. The applicant's trial took place in the Assize Court of the province of Walloon Brabant from 8 to 19 December 2008. At the start of the trial the indictment was read out by the Advocate-General representing the prosecution, and the nature of the offence forming the basis of the charge and any circumstances that might aggravate or mitigate the sentence were likewise indicated.

31. While giving testimony during the trial in the Assize Court, Dr D.V. mentioned the existence of the two letters dated 13 and 27 February 2007 which the applicant had addressed to him. He produced them in court, thus disclosing them for the first time in the proceedings. In view of this new evidence, the President of the Assize Court duly instructed the panel of three psychiatrists, G., B. and M., who had already been involved at the investigation stage and had already confirmed their findings orally before the Assize Court, to produce a further report.

32. On 14 December 2008 the panel of three psychiatrists adopted a report in which they expressed a unanimous opinion. They began by noting by way of introduction:

> "[The first question, concerning the applicant's ability to control her actions at the time of the events and at present] is regularly the most difficult and controversial because of the 'all or nothing' nature of the answer that has to be given regarding inability to control one's actions, so much so that some psychiatrists have for that reason declined to produce expert reports in criminal cases. A total loss of control over one's actions is absolutely clear only in certain cases, such as delusional psychosis ('dementia'). In other cases, it is more debatable and the personal conviction of the experts will be influenced by the presence of certain indicators. Their conclusions, in concise form, must give precise answers to the questions set out in the instructions. These answers reflect the experts' personal conviction after carrying out the various written procedures. They are only ever an informed opinion, and not an absolute scientific truth."

The experts went on to make the following findings in particular:

> "The letter of 13 February [2007] suggests all the signs of melancholic major depression. ... These melancholic states are grounds for emergency hospital admission, or observation, where necessary. ... In the second letter, although in terms of content she unequivocally expresses her anxiety in relation to a suicide where 'I will take my children with me, because there is no longer any future', in terms of meaning she is clearly asking for help, apparently foreseeing her inability to control her future actions. ... These documents thus demonstrate beyond doubt that Ms Lhermitte no longer felt capable of controlling her actions ... it has always been clear that there was mental disturbance ... new evidence [warrants] the firm conviction that at the time of the events, Ms Lhermitte was incapable of controlling her actions on account of a severe mental disturbance. ... Ms Lhermitte developed a severe state of anxiety and depression ... [and] a transient dissociative state of depersonalisation, causing her to perform acts of extreme violence. Only operational thought remains; reflective consciousness is momentarily lost. ... Currently ... she remains fragile and there is still a chance, particularly because mourning is impossible, that she will experience a further episode of mental disturbance making her incapable of controlling her actions: the possibility remains that she may attempt suicide ...

CONCLUSIONS

The mental examination of Geneviève Lhermitte prompts the following conclusion:

The accused was suffering at the time of the events from a severe mental disturbance making her incapable of controlling her actions, and is currently suffering from a severe mental disturbance warranting long-term treatment. ...”

33. The experts presented their report during the trial, on 16 December 2008.

34. On 18 December 2008, after the submissions of the prosecution and the parties had been heard, the jury was called to answer the following five questions put to it by the court’s president:

“**1st question** (principal question as to guilt)

Is the accused Geneviève Lhermitte, present before this court, guilty of having knowingly and intentionally killed [Y.M.], [N.M.], [My.M.], [Mi.M.] and [Me.M.] in Nivelles on 28 February 2007?

2nd question (subsidiary to the 1st question, to be answered by the jury only if it has answered the 1st question in the affirmative)

Is it established that the intentional homicide referred to in the first question was premeditated?

3rd question (principal alternative as to the commission of an act classified as a serious crime, to be answered by the jury only if it has answered the 1st question in the negative)

Is it established that the accused Geneviève Lhermitte, present before this court, committed the act classified as a serious crime of having knowingly and intentionally killed [Y.M.], [N.M.], [My.M.], [Mi.M.] and [Me.M.] in Nivelles on 28 February 2007?

4th question (subsidiary to the 3rd question, to be answered by the jury only if it has answered the 3rd question in the affirmative)

Is it established that the act classified as a serious crime referred to in the 3rd question was premeditated?

5th question (principal question as to social protection, concerning the accused’s current mental state, to be answered by the jury only if it has answered the 1st question in the affirmative or the 3rd question in the affirmative)

Is it established that the accused Geneviève Lhermitte, present before this court, is suffering either from a mental disorder or from a severe mental disturbance or defect making her incapable of controlling her actions?”

35. Counsel for the applicant did not raise any objections to these questions. The following day, after withdrawing to deliberate on their own without the judges, the members of the jury answered “yes” to the first two questions, concerning the applicant’s guilt, and “no” to the last question, concerning her current mental state.

36. Subsequently, the Assize Court, composed of both the three judges and the jury, deliberated on the sentence to be imposed. In a judgment of 19 December 2008 it took note of the guilty verdict reached by the jury

alone and sentenced the applicant to life imprisonment. In conformity with Article 364, final paragraph, of the Code of Criminal Procedure, the Assize Court provided the following reasons for the punishment:

> "The accused's heavy family responsibilities and her painful feelings of isolation and dependence may account for a legitimate desire for greater personal freedom. Her mental fragility, depression and character no doubt made it more difficult to handle this desire and, through dialogue, to seek possible improvements within the limits of her specific circumstances, taking into account all those close to her.
>
> However, neither those factors, nor even a wish to escape from what she considered a dead-end situation through suicide, nor a lack of appropriate help, can provide a sufficient explanation for the acts of extreme violence which she resolved to commit, and which she carried out in cold blood. ...
>
> Regard being had to the specific circumstances relating both to the accused's character and to her living environment, the genuine difficulties experienced by her do not constitute mitigating factors, given the extremely serious nature of her acts."

37. As an ancillary penalty, the applicant was stripped of all titles, ranks and functions she held and was permanently deprived of certain rights in accordance with Articles 19 and 31 of the Criminal Code as in force at the material time. Lastly, the judgment was to be printed and publicly displayed in the municipality where the crime had been committed, in accordance with Article 18 of the Criminal Code.

38. On 8 January 2009 the applicant appealed on points of law, raising the same complaints as those submitted before the Court.

39. On 6 May 2009 the Court of Cassation dismissed the applicant's appeal. As regards the fact that the questions to the jury had not dealt with each of the five homicides separately but had considered them as a whole, it observed in particular that the parties had agreed to the wording of the questions put to the jury. It also pointed out that the requirement for the verdict to take the form of a simple "yes/no" answer to the questions put to the jury was laid down in Article 348 of the Code of Criminal Procedure. In response to the applicant's argument that no reasons had been given for the jury's disagreement with the experts' unanimous opinion that she had been suffering from a severe mental disturbance making her incapable of controlling her actions at the material time and at the time of the trial, the Court of Cassation held:

> "In noting the accused's cold-blooded manner and her determination to carry out her crimes, the judgment indicates the reason why the Assize Court did not accept that the perpetrator had been suffering from any mental disturbance making her incapable of controlling her actions at the time of the events.
>
> Furthermore, the judgment notes that the appellant's attitude demonstrates a lack of awareness of her responsibility, which she will be able to remedy through self-reflection while serving the sentence.
>
> The judgment therefore states the reasons why the conditions for the application of the Social Protection Act are not satisfied."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Proceedings before the Assize Court

1. Relevant provisions of the Code of Criminal Procedure

40. The relevant domestic law and practice applicable at the time of the applicant's trial in the Assize Court are outlined in *Taxquet v. Belgium* ([GC], no. 926/05, §§ 22-42, ECHR 2010).

41. In particular, the relevant provisions were worded as follows:

Article 241

"In all cases where the accused is to stand trial in the Assize Court, the principal public prosecutor shall be required to draw up an indictment.

The indictment shall indicate: (1) the nature of the offence forming the basis of the charge; and (2) the act and any circumstances that may cause the sentence to be increased or reduced; the defendant shall be named and clearly designated.

The indictment shall conclude by summing up in the following terms:

'N... is therefore charged with this murder, this theft or this other crime, with these additional circumstances.'"

Article 313

"...

[The president] shall order the distribution to each juror of a copy of the indictment and of the statement of defence, if one has been filed.

The principal public prosecutor shall read out the indictment and the defendant or his or her counsel the statement of defence.

..."

Article 337

"The question arising from the indictment shall be put in the following terms:

'Is the defendant guilty of committing this murder, this theft or this other crime?'"

Article 341

"After asking the questions, the president shall hand them to the jury, represented by the foreman; at the same time, he or she shall hand over the indictment, the reports establishing the offence and the documents in the file other than the written witness statements.

..."

Article 342

"Once the questions have been put to and handed to the members of the jury, they shall retire to deliberate in private.

... Before the deliberations begin, the foreman shall read out the following instruction, which shall also be displayed in large type in the most visible place in the deliberation room:

'The law does not ask jurors to account for how they reached their personal conviction; it does not lay down rules on which they are to place particular reliance as to the completeness and sufficiency of evidence; it requires them to ask themselves questions, in silence and contemplation, and to discern, in the sincerity of their conscience, what impression has been made on their rational faculties by the evidence against the defendant and the submissions of the defence. The law does not tell them: 'You will hold every fact attested by this number of witnesses to be true'; nor does it tell them: 'You will not regard as sufficiently established any evidence that does not derive from this report, these exhibits, this number of witnesses or this many clues'; it simply asks them this one question, which encompasses the full scope of their duties: 'are you inwardly convinced?'"

Article 343

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

No one may enter while they are deliberating, for any reason whatsoever, without the written authority of the president. ..."

Article 347

"In order to be valid, the jury's verdict shall be adopted by a majority for or against the defendant.

If the votes are equal, the opinion in favour of the defendant shall prevail."

Article 348

"The members of the jury shall then return to their seats in the courtroom.

The president shall ask them for the outcome of their deliberations.

The foreman shall stand up and announce, hand on heart:

'Upon my honour and conscience, the jury's verdict is: Yes, the accused, etc.; No, the accused, etc.'.

..."

Article 364

"... The judges shall retire, together with the jury, to the deliberation room. The body thus constituted, presided over by the president of the court, shall deliberate on the sentence to be imposed in accordance with the criminal law.

The decisions shall be taken by an absolute majority of votes.

...

On a proposal by the president, a decision shall then be taken by an absolute majority on the wording of the grounds for the determination of the sentence."

Article 364 *bis*

"All judgments entailing a conviction shall mention the grounds for the determination of the sentence."

2. Subsequent legislative reforms

42. The Assize Court Reform Act of 21 December 2009, which was adopted after the Chamber judgment in the *Taxquet* case (*Taxquet v. Belgium*, no. 926/05, 13 January 2009) and came into force on 21 January 2010, provided in particular that after receiving the jury's verdict as to guilt, the professional judges were to retire together with the jury to formulate the main reasons for the jury's decision, to be included in a "reasoning judgment". The Act did not make any fundamental changes to the procedure relating to the decision on the sentence to be imposed and to the judgment on the conviction of the accused.

43. The Criminal Law and Procedure Reform and Justice System (Miscellaneous Provisions) Act of 5 February 2016, which came into force on 29 February 2016, introduced further changes to the system. The body composed of the professional judges and the jury now deliberates on the issue of guilt. The provisions of the former Article 342 of the Code of Criminal Procedure have been amended and incorporated into the new Article 327 as follows:

Article 327

"Once the questions have been put, the members of the jury together with the judges shall retire to the deliberation room.

The body thus constituted, presided over by the president of the court, shall deliberate on the issue of guilt.

..."

44. The members of the jury alone vote on the issue of guilt by answering "yes" or "no" to the questions put to them, and the body composed of the judges and jury then formulates the main reasons for the jury's decision. Article 334 of the Code of Criminal Procedure now provides:

"Without having to address all the submissions filed, the composite body shall formulate the principal reasons for the jury's decision.

The question sheet containing the jury's decision shall be appended to the statement of reasons.

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

These reasons are included in a reasoned judgment. The Act has not made any fundamental changes to the procedure relating to the decision on

the sentence to be imposed and to the judgment on the conviction of the accused

B. Relevant provisions of the Criminal Code

45. With regard to persons sentenced to life imprisonment, the Criminal Code, as in force at the material time, provided:

Article 18

"A judgment imposing a sentence of life imprisonment or imprisonment for twenty to thirty years for serious crimes or political offences shall be printed in extract form and publicly displayed in the municipality where the offence has been committed and the municipality where the judgment has been delivered."

Article 19

"All judgments imposing a sentence of life imprisonment for serious crimes or political offences, fixed-term imprisonment for serious crimes or imprisonment for twenty to thirty years or fifteen to twenty years for political offences shall deprive the convicted persons of any titles, ranks and public functions, employment and positions they may hold."

Article 31

"All judgments imposing a sentence of life imprisonment for serious crimes or political offences or imprisonment for at least ten to fifteen years for serious crimes shall permanently disqualify the convicted persons from:

(1) holding public functions, employment or positions;

(2) standing for election;

(3) bearing any decoration or title of nobility;

(4) serving as a juror, expert or attesting or certifying witness to transactions; giving evidence in court proceedings other than straightforward information;

(5) being appointed as a guardian, auxiliary guardian or partial guardian, except of their own children; and acting as a court-appointed adviser, a court-appointed administrator of the property of a person who is presumed absent or a provisional administrator; and

(6) manufacturing, altering, repairing, transferring, keeping, carrying, transporting, importing, exporting or transiting weapons or ammunition, or serving in the armed forces."

46. With respect to the criminal responsibility of the offender, Article 71 provides as follows:

Article 71

"No offence shall be made out where the accused was suffering from a mental disorder at the time of the act or was compelled to act by a force that he or she could not resist."

THE LAW

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

47. The applicant complained of the lack of reasons given in the Assize Court's judgment for finding her criminally responsible and convicting her. She relied on Article 6 § 1 of the Convention, which provides:

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

A. The Chamber judgment

48. After noting, *inter alia*, that the present case followed on from the judgment delivered by the Grand Chamber in the *Taxquet* case (cited above), which had laid down principles reiterated in *Agnelet v. France* (no. 61198/08, §§ 56-62, 10 January 2013), the Chamber observed firstly that the indictment had mentioned the offence with which the applicant was charged, had given a detailed account of the events and had quoted extensively from the various psychological and psychiatric reports that had been produced. It nevertheless found that as regards the findings of fact set out in the indictment and their value in assisting an understanding of the verdict against the applicant, it could not speculate as to whether those findings had influenced the deliberations and the judgment that had eventually been adopted by the Assize Court.

49. The Chamber then observed that the questions put to the jury might not in themselves have enabled the applicant to ascertain which factors, among all those discussed at the trial, had ultimately caused the jury to conclude that she had been responsible for her actions. However, it found it appropriate to look at the proceedings as a whole, including the subsequent court decisions which had clarified the reasons for the jury's verdict. It therefore considered that the applicant could have understood from a combined reading of the Assize Court's sentencing judgment and the Court of Cassation's judgment why the jury had rejected her defence that she had lacked criminal responsibility at the time of the events and had found, on the contrary, that she had been capable of controlling her actions.

50. In the Chamber's view, no criticism could be levelled at the fact that the justification for that decision emerged both from the sentencing judgment adopted by the Assize Court, composed of the jury and the three professional judges who had not attended the deliberations on the issue of guilt, and from the judgment of the Court of Cassation explaining how the sentencing judgment was to be understood in relation to the guilty verdict. The Chamber thus held that the applicant had been afforded sufficient

safeguards enabling her to understand the guilty verdict against her, and that there had therefore been no violation of Article 6 § 1 of the Convention.

B. Submissions of the parties before the Grand Chamber

1. The applicant

51. After referring to the principles established in the Court's case-law (*Taxquet* and *Agnelet*, cited above), the applicant complained of the lack of reasons given in the Assize Court's judgment for finding her criminally responsible and convicting her.

52. She noted that five questions had been put to the jury: the first four had concerned the five killings (questions 1 and 3) and the aggravating circumstance of premeditation (questions 2 and 4), while the fifth had concerned her criminal responsibility. The lack of reasons was the result of the jury's simple "yes/no" answer to the question of her criminal responsibility (with very serious consequences for her), notwithstanding the experts' unanimous conclusion that she was not criminally responsible.

53. The applicant submitted, firstly, that reasons for a decision had to be given by the authority that had made it. However, in her case, although the jury alone had decided to find her criminally responsible, the reasons for that decision emerged from the sentencing judgment adopted by the Assize Court, composed of both the jury and the professional judges. Since neither the judges of the Assize Court nor those of the Court of Cassation had attended the deliberations on the issue of her guilt, the fact that they had attempted to explain the jury's decision was arbitrary.

54. Furthermore, the use of the reasons given for the sentence to explain the decision as to criminal responsibility – a separate issue with very serious implications – was in breach of the requirement of a fair trial. Specific reasons should have been given. The judges of the Assize Court were not competent to explain the jury's decision as to criminal responsibility when determining the sentence. Similarly, the Court of Cassation could only rule on points of law, without adding any new aspects relating to decisions that had already been taken.

55. The applicant submitted that, in order to understand the decision as to criminal responsibility – and, in her specific case, the decision to disregard the experts' unanimous opinions – proper reasons were required; the lack of an explanation from the jury was in itself arbitrary. Furthermore, even assuming that the jury need not provide reasons for its decisions and that the verdict must be understood by looking at the proceedings as a whole, the reasons given subsequently by the courts were no clearer. The judgments of the Assize Court and the Court of Cassation did indeed give reasons for the sentence, but did not explain the decision to disregard the experts' conclusions and to find the applicant criminally responsible.

56. Lastly, the applicant contended that reasons should be given at the time the decision was taken and not retrospectively by a higher court. She did not dispute that a higher court could interpret a lower court's decision, but only on condition that the lower court itself had first given its own reasons, which was not the case here.

57. The applicant requested that she be granted a retrial.

2. The Government

58. The Government, referring to the *Taxquet* judgment (cited above) for the principles applicable to proceedings in assize courts sitting with a lay jury, submitted firstly that it was clear from the indictment that all steps had been taken to verify the coherency of the applicant's confession in respect of the five homicides and her attempted suicide. They referred in particular to a report of 3 May 2007 (see paragraph 25 above) in which the forensic medical expert had noted a number of aspects that had led him to dismiss the possibility of a spontaneous act and favour instead the idea of a preconceived plan. The Government submitted that it was clear from the indictment that throughout the judicial investigation the investigating judge and the investigators had sought to understand the applicant's motivation and what had prompted her to carry out the killings, in view of the large number of witnesses interviewed and the considerable space devoted to the psychologists' and psychiatrists' findings.

59. The Government observed that the fifty-one-page indictment had been read out at the start of the trial in the Assize Court, and that the nature of the offence forming the basis of the charge and any circumstances that might aggravate or mitigate the sentence had likewise been indicated. The applicant had had the opportunity to challenge the indictment at the start of the trial hearing. The subsequent proceedings had also focused on the applicant's mental state at the time of the events. The unexpected submission of two letters in the possession of the psychiatrist who had been treating the applicant had prompted the President of the Assize Court to ask the three experts who had submitted the report of 30 October 2007 to examine her again and give a reasoned opinion as to whether she had been in control of her actions at the material time. In the opinion of the experts themselves, the question of criminal responsibility was regularly the most difficult and controversial issue because of the "all or nothing" nature of the answer that had to be given, besides the fact that their opinion reflected their personal conviction rather than an absolute scientific truth.

60. The Government submitted that the applicant's real complaint was that the Assize Court had not given reasons for disagreeing with the unanimous finding of the psychiatric experts (in their report of 14 December 2008) that she had been suffering from a severe mental disturbance making her incapable of controlling her actions at the material time. However, they

contended that the Assize Court's verdict did in fact state its reasons for disagreeing with the experts' findings.

61. They further noted that the applicant had had an opportunity to call witnesses and to make submissions challenging the testimony heard, quite apart from the fact that the questions for the jury had been read out and a copy of them had been given to the parties, who had indicated their agreement with the proposed wording.

62. The Government submitted that the applicant had been able to understand the verdict and the reasons for her conviction and that the procedure followed had afforded sufficient safeguards against arbitrariness.

63. They also explained that the present case could be distinguished from similar cases in which the Court had held that proceedings in assize courts prior to the Grand Chamber's *Taxquet* judgment had afforded too few safeguards concerning the reasons for convictions (*Castellino v. Belgium*, no. 504/08, 25 July 2013; *Gybels v. Belgium*, no. 43305/09, 18 November 2014; *Hechtermans v. Belgium*, no. 56280/09, 18 November 2014; *Khaledian v. Belgium*, no. 42874/09, 18 November 2014; *Yimam v. Belgium*, no. 39781/09, 18 November 2014; *Devriendt v. Belgium*, no. 32001/07, 17 February 2015; *Maillard v. Belgium*, no. 23530/08, 17 February 2015; *Kurt v. Belgium*, no. 17663/10, 17 February 2015; and *Magy v. Belgium*, no. 43137/09, 24 February 2015).

64. They referred in particular to the Chamber's explanations regarding the fact that the Court of Cassation explained how the sentencing judgment was to be understood in the light of the decision on the applicant's guilt.

65. The Government accepted that neither the judges who had justified the sentence nor the judges of the Court of Cassation had been present during the deliberations of the jury and that those judges might thus appear ill-equipped, in principle, to translate the jurors' "personal conviction" into reasoning. However, the fact remained that, like the jurors, the three Assize Court judges had heard the experts' evidence. It was not hard to imagine that the analysis set out in the experts' report of 30 October 2007 had instilled a firm conviction in the members of the jury and that their minds had already been made up by the time the experts had unanimously reached the opposite conclusion in 2008 after being appointed by the President of the Assize Court to submit a further report. The verdict thus reflected the jurors' personal conviction, and the obligation to provide reasons could be satisfied by other means than explicitly requiring reasoned decisions from the jury.

C. The Court's assessment

1. General principles

66. The Court reiterates that the Convention does not require jurors to give reasons for their decision and that Article 6 does not preclude a defendant from being tried by a lay jury even where reasons are not given for the verdict (see *Taxquet*, cited above, § 90). The absence of reasons in a judgment, owing to the fact that the applicant's guilt has been determined by a lay jury, is not in itself contrary to the Convention (see *Saric v. Denmark* (dec.), no. 31913/96, 2 February 1999; and *Taxquet*, cited above, § 89).

67. Nevertheless, for the requirements of a fair trial to be satisfied, the accused, and indeed the public, must be able to understand the verdict that has been given; this is a vital safeguard against arbitrariness. As the Court has often noted, the rule of law and the avoidance of arbitrary power are principles underlying the Convention (see *Taxquet*, cited above, § 90). In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society (see *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003; *Tatishvili v. Russia*, no. 1509/02, § 58, ECHR 2007-III; and *Taxquet*, cited above).

68. The Court further reiterates that in the case of assize courts sitting with a lay jury, any special procedural features must be accommodated, seeing that the jurors are usually not required – or not permitted – to give reasons for their personal convictions (see *Taxquet*, cited above, § 92). In these circumstances, Article 6 requires an assessment of whether sufficient safeguards were in place to avoid any risk of arbitrariness and to enable the accused to understand the reasons for his or her conviction (ibid., §§ 90 and 92; see also *Judge v. the United Kingdom* (dec.), no. 35863/10, 8 February 2011; *Shala v. Norway* (dec.), no. 1195/10, 10 July 2012; and *Agnelet*, cited above). Such procedural safeguards may include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced, and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict is based and sufficiently offsetting the fact that no reasons are given for the jury's answers (see *Papon v. France* (dec.), no. 54210/00, ECHR 2001-XII; see also *Taxquet*, cited above). Lastly, regard must be had to any avenues of appeal open to the accused.

69. Seeing that compliance with the requirements of a fair trial must be assessed on the basis of the proceedings as a whole and in the specific context of the legal system concerned, the Court's task in reviewing the absence of a reasoned verdict is to determine whether, in the light of all the circumstances of the case, the proceedings afforded sufficient safeguards against arbitrariness and made it possible for the accused to understand why

he or she was found guilty (see *Taxquet*, cited above, § 93). In doing so, it must bear in mind that it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies (see *Salduz v. Turkey* [GC], no. 36391/02, § 54, ECHR 2008; and *Taxquet*, cited above, § 93).

70. In the *Taxquet* judgment (cited above), which concerned an applicant who had been tried together with seven co-defendants by the Assize Court, the Court examined the combined impact of the indictment and the questions to the jury. It noted that although the indictment, which was read out at the start of the trial, indicated the nature of the offence and the circumstances determining the sentence, as well as containing a chronological sequence of the investigative measures and the statements given in evidence, it did not specify "which items of evidence the prosecution could use against [the applicant]" in particular. Above all, the Court observed that in practice the indictment was of "limited effect" since it was filed "before the trial itself, which must serve as the basis for the jurors' personal conviction" (ibid., § 95).

71. The questions put in the *Taxquet* case – a total of thirty-two for eight defendants, of which only four concerned Mr Taxquet – had been succinctly worded and identical for all the defendants, making no reference to "any precise and specific circumstances that could have enabled the applicant to understand why he was found guilty", in contrast to the *Papon* case, in which the Assize Court had referred to the jury's answers to each of the 768 questions put by the court's president (ibid., § 96).

72. It can be inferred from the *Taxquet* judgment that it should be possible to ascertain from a combined examination of the indictment and the questions to the jury which of the items of evidence and factual circumstances discussed at the trial had ultimately caused the jury to answer the questions concerning the accused in the affirmative, in order to be able to: distinguish between the co-defendants; understand why a particular charge had been brought rather than another; determine why the jury had concluded that certain co-defendants bore less responsibility, thus receiving a lesser sentence; and discern why aggravating factors had been taken into account (ibid., § 97). In other words, the questions must be both precise and geared to each individual.

73. The Court has subsequently found a violation of Article 6 § 1 of the Convention in a number of cases concerning France (see *Agnelet*, cited above; *Fraumens v. France*, no. 30010/10, 10 January 2013; and *Oulahcene v. France*, no. 44446/10, 10 January 2013) and Belgium (see paragraph 63 above), two countries with similarities in the procedure before assize courts.

74. Furthermore, it has found no violation of Article 6 of the Convention where the applicants had been afforded sufficient safeguards enabling them to understand the guilty verdict against them. Such cases related in particular to circumstances in which applicants had needed to understand

the reasons for receiving a heavier sentence on appeal than a co-defendant, contrary to the verdict reached by the Assize Court at first instance (see *Voica v. France*, no. 60995/09, 10 January 2013), the lack of differentiation between certain constituent elements of the alleged offence (see *Legillon v. France*, no. 53406/10, 10 January 2013), or the reasons for a conviction when the defendant had denied the offence (see *Judge* (dec.), cited above; and *Bodein v. France*, no. 40014/10, 13 November 2014).

2. Application of these principles in the present case

75. The Court observes at the outset that while the present case concerns the reasons why the applicant was convicted and sentenced to life imprisonment for the premeditated intentional homicide of her five children, the question before it does not relate either to whether and how those acts were committed – both of which matters were established and were admitted by the applicant – or to the legal characterisation of the offences or the severity of the sentence. The issue to be determined in the present case is whether or not the applicant was able to understand the reasons why the jury found that she had been responsible for her actions at the material time, notwithstanding the unanimous findings to the contrary reached by the psychiatric experts, who presented their new report at the end of the trial in the Assize Court (see paragraph 32 above).

76. The Court observes that at the start of the trial the indictment was read out in full and the nature of the offence forming the basis of the charge and any circumstances that might aggravate or mitigate the sentence were likewise indicated. The case against the applicant was then the subject of adversarial argument, each item of evidence being examined and the defendant, assisted by counsel, having the opportunity to call witnesses and respond to the testimony heard. The questions put by the president to the twelve members of the jury at the end of the ten-day hearing were read out and the parties were given a copy.

77. With regard to the combined impact of the indictment and the questions to the jury in the present case, the Court notes firstly that the indictment, which ran to fifty-one pages, gave an account of the precise sequence of events, the steps taken and evidence obtained during the investigation, and the forensic medical reports; a substantial part of it also focused on the applicant's personal history and family life and the motives and reasons that had prompted her to carry out the killings, particularly in the light of the expert assessments of her psychological and mental state (see paragraph 29 above). It observes, however, that the indictment was of limited effect in assisting an understanding of the verdict to be reached by the jury, since it was filed before the trial hearing, which forms the crucial part of proceedings in the Assize Court (see *Taxquet*, cited above, § 95; and *Agnelet*, cited above, § 65). Furthermore, as to the findings of fact set out in the indictment and their value in assisting an understanding of the verdict,

the Court cannot speculate as to whether such findings influenced the deliberations and the decision ultimately reached by the jury (see, in particular, *Agnelet*, cited above; *Voica*, cited above, § 49; and *Legillon*, cited above, § 61). The provisions of Article 6 require in particular an understanding not of the reasons that prompted the judicial investigating bodies to send the case for trial in the Assize Court, but rather of the reasons that persuaded the members of the jury, after the trial hearing at which they had been present, to reach their decision on the issue of guilt.

78. As regards the five questions put to the jury in the present case, it answered the first two in the affirmative and the fifth in the negative. The first question was the principal question concerning the applicant's guilt, the second concerned the aggravating circumstance of premeditation and the fifth – contrary to what the applicant appears to maintain (see paragraph 52 above) – related to her current mental state; the other questions were subsidiary and ultimately devoid of purpose.

79. The Court notes, firstly, that counsel for the applicant did not raise any objections on learning of the president's questions to the jury, seeking neither to amend them nor to propose others. Furthermore, since the first question concerned the applicant's guilt, a positive answer necessarily implied that the jury found that she had been responsible for her actions at the material time. The applicant cannot therefore maintain that she was unable to understand the jury's position on this matter.

80. Admittedly, the jury did not provide any reasons for its finding in that regard, and this was the subject of the applicant's grievance. The Court reiterates, however, that compliance with the requirements of a fair trial must be assessed on the basis of the proceedings as a whole by examining whether, in the light of all the circumstances of the case, the procedure followed made it possible for the accused to understand why he or she was found guilty (see *Taxquet*, cited above, § 93). Such an examination in the present case may reveal a number of factors that should have dispelled any doubts on the applicant's part as to the jurors' conviction regarding her criminal responsibility at the time of the events. The Court observes that from its preliminary stage, the investigation focused on the applicant's personal history, character and psychological state at the time of the killings, as is shown by the indictment, a substantial part of which was devoted to these matters. Moreover, not only was there an adversarial trial, with the defendant and her counsel present, but above all, the emergence of new evidence, namely the letters disclosed by the applicant's personal psychiatrist, led the president to order a further psychiatric assessment (see paragraph 31 above). The psychiatric experts thereupon changed their opinion and came back to present their new findings (see paragraphs 32 and 33 above). It is clear that while the trial hearing always forms the crucial part of proceedings in the Assize Court, in the present case the

question of the applicant's criminal responsibility was indeed a central focus of the hearing.

81. The Court further notes that the sentencing judgment adopted by the Assize Court, composed of the twelve members of the jury together with the three professional judges, also includes reasoning that could assist the applicant in understanding why the jury found her criminally responsible. Thus, while noting the applicant's psychological problems and the possible factors causing her to act as she did, the Assize Court explicitly mentioned both her resolve to commit the murders and the cold-blooded manner in which she had carried them out (see paragraph 36 above); this was a logical conclusion in view of the jury's answers to the questions. The Court of Cassation, moreover, did not interpret the sentencing judgment in any other way, since it held that consideration of the applicant's cold-blooded manner and her determination to carry out her crimes had constituted the Assize Court's reason for finding that she had been criminally responsible at the time of the events (see paragraph 39 above).

82. In the Court's view, the fact that the sentencing judgment was drafted by professional judges who had not attended the deliberations on the issue of guilt cannot call into question the value and impact of the explanations provided to the applicant. It observes firstly that these explanations were provided without delay, at the end of the Assize Court session, since the sentencing judgment was delivered on 19 December 2008. It further notes that although the professional judges formally drafted the judgment in question, they were able to obtain the observations of the twelve members of the jury, who in fact sat alongside them in deliberating on the sentence and whose names appear in the judgment. Lastly, the professional judges were themselves present throughout the trial hearing, and must therefore have been in a position to place those observations in their proper context.

83. The fact remains that the applicant criticised the lack of specific explanations for the difference in opinion between the jury, which had found her criminally responsible, and the three psychiatric experts, who in their last report had stated their unanimous opinion that the applicant had been "suffering at the time of the events from a severe mental disturbance making her incapable of controlling her actions". However, the Court reiterates that both the admissibility of evidence and its assessment are primarily a matter for regulation by national law and that as a general rule it is for the national courts to assess the evidence before them. The Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, its function is not to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see,

among many other authorities, *Schenk v. Switzerland*, 12 July 1998, § 46, Series A no. 140; *Bernard v. France*, 23 April 1998, § 37, *Reports of Judgments and Decisions* 1998-II; and *Bochan v. Ukraine* (no. 2), no. 22251/08, ECHR 2015). Besides the fact that the experts themselves played down the impact of their findings by stating that their answers reflected their personal conviction while acknowledging that "[t]hey are only ever an informed opinion, and not an absolute scientific truth" (see paragraph 32 above), the Court has already found that statements made by psychiatric experts at an Assize Court trial form only one part of the evidence submitted to the jury (see *Bernard*, cited above, § 40). Accordingly, the fact that the jury did not indicate the reasons that prompted it to adopt a view at variance with the psychiatric experts' final report in favour of the applicant was not capable of preventing her from understanding, as noted above, the decision to find her criminally responsible.

84. In conclusion, having regard to all these circumstances, the Court considers that the applicant was afforded sufficient safeguards enabling her to understand the guilty verdict against her.

85. There has therefore been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

Holds, by ten votes to seven, that there has been no violation of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 November 2016.

Françoise Elens-Passos	Guido Raimondi
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Raimondi, Lazarova Trajkovska, Laffranque, Sicilianos, Lubarda, Grozev et Harutyunyan is annexed to this judgment.

G.R.
F.E.P.

JOINT DISSENTING OPINION OF JUDGES RAIMONDI, LAZAROVA TRAJKOVSKA, LAFFRANQUE, SICILIANOS, LUBARDA, GROZEV AND HARUTYUNYAN

(Translation)

1. We are regrettably unable to agree with the majority's conclusion that there has been no violation of Article 6 § 1 of the Convention, having regard in particular to the position adopted by the Court in the *Taxquet v. Belgium* judgment ([GC], no. 926/05, ECHR 2010) and to the circumstances of the present case. On the contrary, we consider that the criteria established by the Court in *Taxquet* and viewed in the light of the subsequent case-law were not complied with in the present case.

2. It should be emphasised at the outset that the rule of law and the avoidance of arbitrary power are principles underlying the Convention (see, among other authorities, *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X, and *Taxquet*, cited above, § 90). In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society (see *Taxquet*, ibid.).

3. The rule of law, which is one of the fundamental principles of a democratic society and is inherent in all the Articles of the Convention (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III), finds its quintessential expression in Article 6 of the Convention (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 46, Series A no. 301-B).

4. Accordingly, the right to a fair hearing must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

5. In the present case, we consider that the applicant was not afforded sufficient safeguards for a fair trial observing the principle of the rule of law and, more specifically, that the failure to provide reasons for the jury's decision as to her guilt and criminal responsibility did not satisfy the requirements laid down in the *Taxquet* judgment and thus amounted to a violation of Article 6 of the Convention.

1. Principles established in the Taxquet *judgment*

6. In *Taxquet* (cited above, §§ 83-84) the Grand Chamber noted that the institution of the lay jury existed in a variety of forms in Europe and emphasised that it could not be called into question. Several High Contracting Parties intervened in the case, moreover, submitting arguments

in defence of their own national systems (France, Ireland and the United Kingdom).

7. The *Taxquet* judgment indicates that while "any special procedural features must be accommodated" in systems with a lay jury, "Article 6 requires an assessment of whether sufficient safeguards were in place to avoid any risk of arbitrariness and to enable the accused to understand the reasons for his conviction" (ibid., §§ 90-92).

8. The Grand Chamber gave examples of procedural safeguards. Such safeguards could include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced, and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict is based or sufficiently offsetting the fact that no reasons are given for the jury's answers (ibid., § 92; see also *Papon v. France* (dec.), no. 54210/00, ECHR 2001-XII). Lastly, regard must be had to any avenues of appeal open to the accused.

9. Applying these principles to the circumstances of the *Taxquet* case, the Court found that neither the indictment (whose value in assisting "understanding" was "limited") nor the questions put to the jury (thirty-two for seven defendants, four of which concerned the applicant alone and did not "refer to any precise and specific circumstances") contained sufficient information about the applicant's role in the commission of the offences of which he was accused. It made a distinction between the case before it and the *Papon v. France* case (cited above), in which the Assize Court had referred to the jury's answers to each of the 768 questions put by the court's president (see *Taxquet*, cited above, § 96). In addition, the Court observed that the Belgian system made no provision for an ordinary appeal against judgments of the Assize Court.

10. The *Taxquet* judgment thus clearly establishes the need to understand not the reasons that prompted the judicial investigating bodies to send the case for trial in the Assize Court, but the reasons that persuaded the members of the Assize Court, after the trial hearing at which they had been present, to reach their decision on the issues of guilt, criminal responsibility and the corresponding sentence.

11. This idea was reaffirmed in *Agnelet v. France* (no. 61198/08, 10 January 2013), and also in four other judgments delivered on the same day in cases concerning France (*Oulahcene*, *Fraumens*, *Legillon* and *Voica v. France*, nos. 44446/10, 30010/10, 53406/10 and 60995/09 respectively, 10 January 2013) and in subsequent judgments concerning Belgium (*Castellino v. Belgium*, no. 504/08, 25 July 2013; *Gybels v. Belgium*, no. 43305/09, 18 November 2014; *Hechtermans v. Belgium*, no. 56280/09, 18 November 2014; *Khaledian v. Belgium*, no. 42874/09, 18 November 2014; *Yimam v. Belgium*, no. 39781/09, 18 November 2014; *Devriendt v. Belgium*, no. 32001/07, 17 February 2015; *Maillard v. Belgium*,

no. 23530/08, 17 February 2015; *Kurt v. Belgium*, no. 17663/10, 17 February 2015; and *Magy v. Belgium*, no. 43137/09, 24 February 2015).

2. Application of these principles to the present case

12. In the present case, it should be noted that the judgment emphasises the importance of the indictment, which gave an account, running to fifty-one pages, of the events, the steps taken and evidence obtained during the investigation, the forensic medical reports and so on (see paragraphs 29 and 76-77 of the judgment). However, it must be pointed out that, as the majority admit, "the indictment was of limited effect in assisting an understanding of the verdict to be reached by the jury, since it was filed before the trial hearing, which forms the crucial part of proceedings in the Assize Court" (see paragraph 77 of the judgment).

13. This is especially so since the forensic medical reports mentioned in the indictment were the ones produced *before* the trial. The expert assessment that was ordered *during the trial* by the President of the Assize Court himself on the basis of new evidence – namely two letters from the applicant disclosed during the trial by her personal psychiatrist – was by definition not included in the indictment. However, it is precisely that report, submitted by the three psychiatrists on 14 December 2008, which was crucial to the present case, given that it was unanimous and diametrically opposed to the previous reports. We would point out that the new expert report reached the conclusion that the applicant "*was suffering at the time of the events from a severe mental disturbance making her incapable of controlling her actions, and [at the time of this fresh assessment was] suffering from a severe mental disturbance warranting long-term treatment*". Consequently, seeing that the indictment did not in any way reflect this spectacular about-turn, it was of very limited, indeed marginal value as such in assisting an understanding of the reasons underpinning the jury's subsequent verdict.

14. The five questions put to the jury, moreover, were succinctly worded and made no allusion to the specific circumstances, in line with the Court's findings in *Taxquet* and the other cases cited above concerning assize courts sitting with a lay jury (see in particular the judgments concerning Belgium cited in paragraph 10 above). These questions were of a somewhat standardised nature, making no reference to "any precise and specific circumstances" (to borrow the phrase used in *Taxquet*). The key questions – the first and fifth ones – were worded as follows:

> "Is the accused Geneviève Lhermitte, present before this court, guilty of having knowingly and intentionally killed [Y.M.], [N.M.], [My.M.], [Mi.M.] and [Me.M.] in Nivelles on 28 February 2007?"

> "Is it established that the accused Geneviève Lhermitte, present before this court, is suffering either from a mental disorder or from a severe mental disturbance or defect making her incapable of controlling her actions?"

15. The jury alone deliberated on these questions and its answer had to be limited to "yes" or "no", in accordance with Belgian law as in force at the time. Such answers, however, do not constitute proper reasoning. Viewed in isolation, they did not allow the applicant to "understand the reasons for her conviction", within the meaning of the *Taxquet* judgment.

16. The same applies to the combined effect of the indictment and the first and fifth questions. Admittedly, the question of the applicant's guilt and criminal responsibility, and thus whether or not she was capable of answering for her actions before a criminal court, was, as the Government noted, a central concern of the investigating judge and the investigators. However, it is important to bear in mind that whereas the two experts in psychology had found that the applicant was not criminally responsible (see paragraph 26 of the judgment), the panel of three psychiatric experts had initially reached the opposite conclusion (see paragraph 27).

17. The emergence of new evidence during the trial in the Assize Court, namely the letters disclosed by the applicant's personal psychiatrist, persuaded the court's president to order a fresh examination of the applicant's condition by the same panel of psychiatrists. This serves to confirm that while the trial hearing undeniably forms the crucial part of criminal proceedings, in the present case the question of the applicant's guilt and criminal responsibility was a central focus of the trial. Accordingly, the about-turn performed by the same experts during the trial, following the discovery of new evidence, in finding that the applicant had not been criminally responsible at the time of the events (and, consequently, the unanimous view shared by all the experts on this point) was indisputably a fundamental aspect of the trial.

18. We therefore consider, in view of the importance of the question of criminal responsibility in the circumstances of the case, that the applicant was entitled to expect an explanation of the reasons that had prompted the jury to disregard the experts' unanimous findings, including those ordered and presented during the trial. However, as the Government themselves admitted, it is "not hard to *imagine* that the analysis set out in the experts' report of 30 October 2007 had instilled a firm conviction in the members of the jury and that *their minds had already been made up* by the time the experts had unanimously reached the opposite conclusion in 2008 after being appointed by the President of the Assize Court to submit a further report" (see paragraph 65 of the judgment, emphasis added).

19. In our opinion, while it provides a likely explanation for the attitude of the members of the jury, this very honest observation by the Government should in itself constitute an important, if not decisive, factor in finding a violation of Article 6 in the present case. "To imagine" is almost the

opposite of "to state reasons" and "to understand". The Government explicitly conceded, moreover, that the members of the jury had already formed their opinion before the submission of the new expert report and that the report had therefore had no bearing on their decision. In other words, according to the Government, a crucial piece of evidence was quite simply ignored before being disregarded, apparently for no particular reason. In such circumstances, it is hard to see how we can speak of procedural safeguards enabling the accused to understand the reasons for her conviction.

20. Furthermore, as regards the explanations said to have been given by the Assize Court (with the members of the jury being joined on this occasion by the three judges) and subsequently by the Court of Cassation, we share the opinion expressed by Judges Sajó, Keller and Kjølbro, appended to the Chamber judgment. It is hard to accept that reasons may be provided not by those judges or members of the jury who reach the decision, but by other persons who did not attend the deliberations on the matter in issue. In any event, the sentencing process was not an occasion to deal with the – separate – issue of guilt and criminal responsibility. As regards the Court of Cassation, while that court may explain the reasoning adopted by a lower court by addressing points of law – a task plainly within its jurisdiction – it cannot do so where the reasoning simply does not exist, as in the present case, especially as in this instance the crucial question was purely factual and not legal. Similarly, we cannot accept that a supreme court can take the place of the lower courts in stating the reasons for their decision: such a practice would run the risk of appearing arbitrary.

3. *Legislative amendments and judicial practice following the* Taxquet *judgment*

21. The *Taxquet* judgment had a considerable impact not only in Belgium, but also in other countries, especially France. It is significant that Law no. 2011-939 of 10 August 2011 introduced, *inter alia*, a new Article 365-1 into the French Code of Criminal Procedure, reading as follows:

Article 365-1

"The president or one of the other judges designated by him shall draw up the reasons for the judgment.

In the event of a conviction, the reasoning shall consist of a statement of the main items of evidence against the defendant which persuaded the assize court in respect of each of the charges against him. This relates to the evidence examined during the deliberations conducted by the court and the jury in accordance with Article 356, prior to the voting on the questions.

> The reasons shall be set out in a document appended to the question sheet known as the 'statement of reasons form', which shall be signed in accordance with Article 364.
>
> Where the particular complexity of the case, on account of the number of defendants or the offences with which they are charged, makes it impossible to draw up the statement of reasons form immediately, it shall be drafted, added to the case file and filed with the registry of the assize court no later than three days after the judgment is delivered."

22. In *Agnelet* (cited above, § 34) the Court, while finding a violation of Article 6 § 1 of the Convention in respect of proceedings conducted prior to the enactment of the 2011 law, cited the full text of the new Article 365-1 of the Code of Criminal Procedure. Furthermore, in the same judgment and the four other judgments delivered on the same day in cases against France (*Oulahcene*, *Fraumens*, *Legillon* and *Voica v. France*, all cited above), as well as in *Bodein v. France* (no. 40014/10, 13 November 2014), the Court included an identical paragraph at the end of its assessment and immediately before its finding as to the alleged violation of Article 6 § 1, reading as follows:

> "Lastly, the Court takes note of the reform implemented since the time of the events, following the enactment of Law no. 2011-939 of 10 August 2011 which, among other things, introduced a new Article 365-1 into the Code of Criminal Procedure providing that the reasons for the assize court's judgment are now to be set out in a 'statement of reasons form' appended to the question sheet. In the event of a conviction, the Law requires the statement of reasons to refer to the evidence examined in the course of the deliberations which persuaded the assize court in respect of each of the charges brought against the accused. In the Court's view, this reform appears, on the face of it, to significantly strengthen the safeguards against arbitrariness and to help the accused understand why they were convicted, thus meeting the requirements of Article 6 § 1 of the Convention." (see *Agnelet*, cited above, § 72; *Oulahcene*, cited above, § 56, *Fraumens*, cited above, § 51; *Legillon*, cited above, § 68; *Voica*, cited above, § 54; and *Bodein*, cited above, § 43)

23. In the more recent decision in *Matis v. France* ((dec.), no. 43699/13, 6 October 2015) the Court gave its first ruling on criminal proceedings in which a "statement of reasons form" had been drawn up and appended to the case file. The findings in that case indicate that a factual statement of reasons, however brief (in this instance, running to one page and set out as a series of bullet points), is capable of meeting the requirements of Article 6 of the Convention.

24. In Belgium, the *Taxquet* judgment has led to similar developments. In a judgment of 19 May 2009 the Court of Cassation departed from its previous position and for the first time quashed an assize court judgment on the grounds that it did not state the reasons why the appellant had been found guilty of murder or why his plea as to the mitigating factor of provocation had not been accepted (Court of Cassation, 19 May 2009, *Pasicrisie belge* (Pas.), 2009, no. 330). It has done likewise in several subsequent cases in which a similar complaint was raised (see, among other examples, Court of Cassation, 10 June 2009, Pas., 2009, no. 392, and Court

of Cassation, 17 November 2009, Pas., 2009, no. 673, both cited in *Magy*, cited above, § 18).

25. Shortly afterwards, the Assize Court Reform Act of 21 December 2009 was enacted, coming into force on 21 January 2010; it provided in particular that after receiving the jury's verdict as to guilt, the professional judges were to retire together with the jury to formulate the main reasons for the jury's decision, to be included in a "reasoning judgment" (see paragraph 42 of the judgment in the present case). A new law of 5 February 2016, which came into force on 29 February 2016, marked a further step. The body composed of the professional judges and the jury now deliberates on the issue of guilt. The members of the jury alone vote on the issue of guilt by answering "yes" or "no" to the questions put to them, and the composite body then formulates the main reasons for the jury's decision. These are included in a reasoned judgment (see the relevant provisions of the Code of Criminal Procedure cited in paragraph 43 of the judgment).

26. These important legislative developments are briefly recounted in the "Facts" part of the judgment (see paragraphs 42-43). In our opinion, they would also have been worth mentioning in the Court's assessment of the merits of the case, in line with the approach taken in all the judgments cited above concerning France. These reforms to Belgian law appear, on the face of it, to significantly strengthen the safeguards against arbitrariness and to help the accused understand why they were convicted, thus meeting the requirements of Article 6 § 1 of the Convention.