

defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see the above-mentioned *Doorson* judgment, para. 72 and the above-mentioned *Van Mechelen and Others* judgment, para. 54).

62. In cases where evidence has been withheld from the defence on public interest grounds, it is not the role of this Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to assess the evidence before them (see the above-mentioned *Edwards* judgment, para. 34). Instead, the European Court's task is to ascertain whether the decision-making procedure applied in each case complied, as far as possible, with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused."³⁸

X. Penalties incurred

1. The penalties incurred by a person accused of terrorist activities must be provided for by law for any action or omission which constituted a criminal offence at the time when it was committed; no heavier penalty may be imposed than the one that was applicable at the time when the criminal offence was committed.

This guideline takes up the elements contained in Article 7 of the European Convention on Human Rights. The Court recalled that:

"The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see the *S.W. and C.R. v. the United Kingdom* judgments of 22 November 1995, Series A nos. 335-B and 335-C, pp. 41-42, para. 35, and pp. 68-69, para. 33 respectively)."³⁹

"The Court recalls that, according to its case-law, Article 7 embodies, inter alia, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From these principles it follows that an offence and the sanctions provided for it must be clearly defined in the law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable.

38. *Rowe and Davies v. the United Kingdom*, 16 February 2000, paras. 60-62.

39. *Ecer and Zeyrek v. Turkey*, 27 February 2001, para. 29.