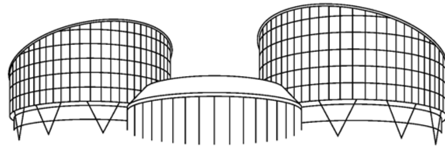

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ADAMČO v. SLOVAKIA

(Application no. 45084/14)

JUDGMENT

Art 6 § 1 (criminal limb) • Fair hearing • Adversarial trial • Failure to notify applicant of observations of prosecution service • Conviction based to decisive degree on statements by accomplice arising from plea bargaining arrangement • Lack of adequate judicial scrutiny

STRASBOURG

12 November 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Adamčo v. Slovakia,

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

Paul Lemmens, *President,*
Paulo Pinto de Albuquerque,
Dmitry Dedov,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Lorraine Schembri Orland, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 15 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 45084/14) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mr Branislav Adamčo ("the applicant"), on 11 June 2014.

2. The applicant was represented by Mr M. Kuzma, a lawyer practising in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that his murder trial had been unfair within the meaning of Article 6 of the Convention in that observations by the public prosecution service ("the prosecution service") in reply to his appeal and appeal on points of law had not been transmitted to him, as a result of which he had been deprived of an opportunity to respond in his defence, and in that his conviction had been based on evidence from a witness who had obtained a benefit for testifying against the applicant.

4. On 12 July 2017 notice of the above complaints as well as of that concerning the composition of the benches in the applicant's cases was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and is detained in Leopoldov.

A. The applicant's trial and conviction

6. In 2001 the applicant was charged and indicted to stand trial on the charge of being a co-perpetrator of a murder (of a certain K.) within the meaning of Articles 9 § 2 and 219 § 1 of the Criminal Code (Law no. 140/1961 Coll., as applicable at that time – "the CC"), on the suspicion that he had driven a hit man to and from the victim of an organised-crime-related contract killing. Throughout the ensuing proceedings he was at all times represented by one or more lawyers.

7. The indictment was examined in three rounds by the Banská Bystrica Regional Court as the trial court ("the trial court") and by the Supreme Court as the appellate court ("the appellate court").

8. The applicant was initially acquitted on 14 November 2003 and 21 June 2005, but both judgments were quashed – on 14 September 2004 and 11 July 2006 respectively – following appeals by the prosecution service. A witness, M., gave evidence in the course of these proceedings on five occasions, denying having anything to do with the affair and having any knowledge of it (for more about the status of M., see paragraphs 23 *et seq*. below).

9. At a fresh hearing before the trial court on 19 March 2007, M. stated that he had been the driver when K. was killed and he identified the applicant as the hitman.

10. On 20 March 2007, the prosecution service modified the definition of the act for which the applicant stood indicted and reclassified the offence as aggravated murder.

11. On 28 June 2007 the Regional Court found the applicant guilty of murder under Article 219 § 2 (h) of the Criminal Code (murder of a witness), having accepted that it had been motivated by retaliation for the evidence the victim had given in another organised-crime-related trial. Finding that the statutory conditions for imposing an extraordinary penalty (*výnimočný trest*) above the ordinary penalty scale had been met, the Regional Court sentenced the applicant to twenty-four years' imprisonment.

12. Both the defence and the prosecution service appealed (*odvolanie*).

In so far as relevant, the defence proclaimed the applicant's innocence and contested what they considered to be inconsistencies in the evidence given by M. and certain other witnesses. In addition, they challenged the credibility of M. as a witness, arguing that he had incriminated the applicant purely in order to buy impunity from the prosecution service in connection with the charge of the murder of O. that he was facing in a different trial.

In its appeal, the prosecution service argued that it should have been recognised that the applicant had committed the offence of murder on a number of occasions and that the murder in the present case had been committed by an organised group, within the meaning of Article 219 § 2 (c) and (h) of the CC.

13. On 29 May 2008 the appellate court invited the prosecution service to comment on the applicant's appeal, which they did in a submission of 15 August 2008, addressing various legal and evidentiary aspects of the case. The observations are signed by a prosecutor, Š., attached to the Office of the Prosecutor General.

14. On 7 November 2008 the applicant inspected the court file. According to him, the observations by the prosecution service of 15 August 2008 were not a part of the file at that time and, as he would learn later, they and their attachments were stored separately in an irregular manner. In order to substantiate this contention, he submitted a copy of these observations bearing no case-file number, unlike documents that are included in a court case file in a regular fashion.

15. On 11 November 2008 the appellate court held a public conference (*verejné zasadnutie*), at which it determined the appeals. The prosecution service was represented by the prosecutor Š.

The appellate court upheld the applicant's conviction, but reduced his sentence to fifteen years' imprisonment, observing that the available evidence provided no basis for imposing an extraordinary penalty above the ordinary penalty scale, the fifteen-year prison term being its upper end.

In so far as the applicant had claimed that his conviction had been mainly based on the evidence from M. and that this evidence had been fallacious, the appellate court dismissed the argument as unfounded, observing that by changing his previous position in the present trial M. had merely incriminated himself, in addition to the applicant, but had obtained no advantage. It noted in particular that the prosecution of M. for the murder of K. had only been suspended. Moreover, the evidence from M. had been corroborated by other incriminating evidence.

16. On 1 February 2010 the applicant appealed on points of law (*dovolanie*). He raised a number of objections and argued that his appeal was admissible under Article 371 § 1 (b), (c), (e), (g) and (h) of the Code of Criminal Procedure (Law no. 301/2005 Coll., as amended). These provisions allowed for an appeal on points of law if, respectively, there had been an error in the composition of the tribunal (b), there had been an important infringement of the rights of the defence (c), there had been bias on the part of a judge or a prosecuting authority (e), the decision had been based on unlawfully obtained evidence (g), and a type of penalty had been imposed which had not been envisaged by statute or the penalty had been outside the applicable penalty scale (h).

In so far as relevant, the applicant contended that there had been irregular modifications to the composition of the formations dealing with his case at the trial level at the appellate level.

17. In addition, the applicant complained that the submissions of the prosecution service of 15 August 2008 in reply to his appeal had not been communicated to him, and that neither they nor the request by the appellate

court for those observations had even been included in the case-file, although – without mentioning them – the appellate court had drawn on them in its judgment.

The applicant also contested his conviction on the grounds that to a decisive degree it had been based on unreliable evidence from M.

The appeal on points of law fell to be examined by the Supreme Court sitting as a cassation-instance court ("the cassation court").

18. As the applicant would learn later from the cassation court's decision on his appeal on points of law, on 11 March 2010 the prosecution service filed observations in reply to it. A copy of them was not transmitted to him. In these observations, the prosecution service briefly addressed all of the grounds of the applicant's appeal. They considered that the gist of the appeal was the applicant's discontent with the lower courts' assessment of evidence and findings of fact, but not points of law, an appeal on points of law only being admissible with regard to the latter. In addition, as to the applicant's own oral submissions and evidence from some of the witnesses, the prosecution service referred to their arguments in their observations of 15 August 2008 on the applicant's appeal (see paragraph 13 above).

19. On 6 May 2011 the applicant made a submission to the cassation court in support of his appeal on points of law, stating specifically that, *inter alia*, if the prosecution service had made any observations in reply to it, he had not received a copy of them.

20. On 14 June 2011 the cassation court rejected (*odmieta*) the applicant's appeal on points of law, having found that while such an appeal had been available, none of the grounds relied on by the applicant had been established. On the grounds last mentioned, the cassation court referred to Article 382 (c) of the Code of Criminal Procedure, which provided for rejection of an appeal on points of law "without examination of the matter" if it was apparent that none of the statutorily recognised grounds for appealing on points of law had been established (for more see also paragraph 26 in "*Relevant domestic law*" below).

In particular, it considered that his objections as to the composition of the formations dealing with his case were inadmissible because the applicant could have but had failed to raise them before the lower instances. Nevertheless, it held that "the chambers dealing with his case at the courts of lower instances [had been] set up in compliance with the applicable work schedules [*rozvrh práce*] and [had] proceeded in compliance with statutory rules".

Moreover, the cassation court observed that it had been in accordance with the applicable rules for the prosecution service to be asked for observations in reply to the applicant's appeal. It dismissed as unfounded his complaint that a copy of those observations had not been served on him, observing that it had been open to him and his lawyers at all times to inspect

the case file and thereby to learn of any facts relevant for the examination of his case.

The cassation court gave no specific answer to the applicant's argument concerning the witness M. However, it found that the lower courts had adequately established and properly assessed all the relevant facts and had sufficiently refuted the applicant's defence.

B. Final decision

21. On 3 October 2011 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court. Relying on various components of his right to a fair trial under Article 6 of the Convention and their constitutional equivalents, he advanced the same complaints as those mentioned above in relation to his appeal on points of law. In addition, he contended that he had never received a copy of the observations by the prosecution service in reply to his appeal on points of law and had thereby been deprived of a possibility to respond.

22. On 23 January 2014 the Constitutional Court declared the complaint inadmissible. As to its relevant part, it cited extensively from the contested decisions finding no constitutionally relevant unlawfulness, arbitrariness or irregularity in them.

In particular, it noted that objections in relation to the composition of the formations dealing with the applicant's case fell as a general rule within the jurisdiction of the ordinary courts. The applicant's objection before the Constitutional Court mainly concerned the formation that had tried him at the trial-court level. In that connection, the Constitutional Court noted the cassation court's finding that the applicant had failed to raise that objection before the lower courts, as a result of which the cassation court had had no jurisdiction to entertain it. The Constitutional Court concluded that, accordingly, it was also prevented from dealing with it.

As to the observations of the prosecution service in reply to the applicant's appeal, the Constitutional Court noted that both the appeal by the applicant and that of the prosecution service had been examined by the appellate court at a public conference in the course of which the applicant and his two lawyers had extensively used the opportunity to submit any arguments and objections they had deemed appropriate.

As regards the observations of the prosecution service in reply to the applicant's appeal on points of law, the Constitutional Court found that they contained no important elements of fact or law new in relation to those already known to the applicant and the reliance on which by the prosecution service he could have anticipated.

Accordingly, the Constitutional Court concluded that, in terms of substance, the non-service of those observations on the applicant could not have caused any prejudice to his rights.

Like the court of cassation, the Constitutional Court gave no specific answer to the applicant's argument about the credibility of the evidence from M.

The Constitutional Court's decision was served on the applicant on 21 March 2014 and it was not amenable to appeal.

C. Witness M.

23. Prior to the change of his testimony in the applicant's trial (see paragraph 9 above), on 27 October 2005 M. was charged with murder in respect of a different victim (a certain O.) and detained pending trial on that charge. On an unspecified later date, the investigation was closed and on 30 March 2006 he was released.

24. On the basis of a decision of 30 June 2009, M. was also investigated on suspicion of perjury in connection with having submitted conflicting versions of the applicant's involvement in the murder of K. However, in a decision of 17 September 2009 the prosecutor Š. annulled the decision to open that investigation as he found it unlawful.

25. On the basis of the statements he had made in the course of the applicant's trial, M. was suspected of having participated in the murder of K. himself as the applicant's accomplice. On 15 February 2006 the prosecution service agreed temporarily to suspend the bringing of charges against him. Charges were brought on 16 December 2009 but on 10 May 2010 the prosecution service terminated the proceedings on the grounds that M. had significantly contributed to the detection of a serious crime committed by an organised group and to the prosecution and conviction of its perpetrators and that, as envisaged by Article 215 § 3 of the Code of Criminal Procedure, the interests of society in detecting that crime prevailed over its interest in prosecuting M.

II. RELEVANT LEGAL FRAMEWORK

A. Code of Criminal Procedure

26. Article 382 provides for a rejection of an appeal on points of law "without the examination of the matter" if (a) the appeal is belated, (b) the appeal has been brought by a person who is not eligible to appeal, (c) it is apparent that the grounds for appealing in accordance with Article 371 are not established, (d) ordinary remedies have not been exhausted, (e) the appeal does not meet the formal requirements, or (f) the appeal is directed against a decision that is not open to appeal on points of law.

27. Pursuant to Article 386, if the cassation court finds any grounds of appeal as envisaged in Article 371 established, it quashes the challenged

decision, the relevant part of it or, as the case may be, invalidates the underlying proceedings.

B. Prosecution Service Act

28. According to section 2 of the Act (Law no. 153/2001 Coll., as amended):

> “The prosecution service shall be an autonomous, hierarchically structured and integrated system of State organs headed by the Prosecutor General, in which prosecutors operate in a relationship of subordination and superiority.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

29. The applicant complained (i) that he had been denied a hearing by a tribunal established by law as a result of changes in the composition of the formations deciding his case at the trial level and the appellate level; (ii) that the submissions of the prosecution service of 15 August 2008 in reply to his appeal and those of 11 March 2010 in reply to his appeal on points of law had not been served on him whereby he had been deprived of the possibility to reply in his defence; and (iii) that his conviction had to a decisive extent been based on evidence from M., who had had an obvious motivation to testify in line with arrangements with the prosecution rather than to tell the truth.

He relied on Article 6 §§ 1 and 3 (b) of the Convention, the relevant part of which reads as follows:

> “1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law. ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...”

A. Admissibility

1. Tribunal established by law

30. The applicant argued that he had been denied a hearing by a tribunal established by law before the trial court and the appellate court.

31. The Government objected that the complaint was inadmissible on account of non-exhaustion of domestic remedies. In that regard, they pointed out that, as established by the cassation court and the Constitutional

Court, the applicant had failed to raise any objections in relation to the composition of the trial court before that court and in his appeal

32. The applicant disagreed, reiterating his complaint and submitting, in particular, that he had complained about the composition of the tribunal at the trial-court level at the public session before the appellate court on 11 November 2008 but that the appellate court had failed to take note of that in the transcript of that session.

33. The Court notes that this complaint has two legs, one concerning the trial court and one concerning the appellate court. With regard to both, it has not been disputed between the parties that in order to satisfy the requirement of exhaustion of domestic remedies in relation to the complaint concerning the alleged lack of a hearing by a tribunal established by law, the applicant has to have validly raised this complaint before the Constitutional Court (see, for example, *L.G.R. and A.P.R. v. Slovakia* (dec.), no. 1349/12, § 51, 13 May 2014, with further references).

34. As to the part of the complaint concerning the bench in the applicant's case at the trial-court level, it has further not been disputed between the parties that the applicant raised no objection in that connection while the case was pending before that court. There is no record of any objection in relation to the composition of the trial court in the transcript of that session and there is no indication that the applicant raised any objections in relation to that transcript at the national level. Accordingly, it cannot be accepted that the applicant raised the complaint at the national level in compliance with the formal requirements laid down in domestic law (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

35. As to the remaining part of the complaint, which concerns the applicant's tribunal at the level of the appellate court, the Court notes that he included no such complaint in his constitutional complaint.

36. Accordingly, the complaint that the applicant was not tried by a tribunal established by law must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Other complaints

37. The Court notes that the remaining complaints, which concern the fairness of the applicant's trial, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Non-notification of the observations of the prosecution service

38. The applicant complained that the proceedings in his case had not been adversarial in that the observations of the prosecution service of 15 August 2008 in reply to his appeal and of 11 March 2010 in reply to his appeal on points of law had not been served on him and that he had thereby been denied the opportunity to respond to them.

39. The Government contested that claim. They submitted that a copy of the appeal by the prosecution service against the first-instance judgment convicting the applicant had been sent to him and that, likewise, a copy of the applicant's appeal had been sent to the prosecution service.

They also pointed out that, on 7 November 2008, the applicant had inspected the court file (see paragraph 14 above) and had considered that, on that occasion, he had had an opportunity to familiarise himself with all of its content.

Moreover, the Government emphasised that the applicant had had and had amply made use of, directly and through his lawyers, the opportunity to plead his appeal at the public session of 11 November 2008. There had accordingly been no appearance of any genuine restrictions on the part of the applicant to state and submit anything he had considered relevant for the outcome of his proceedings.

Lastly, they argued that the present case differed from *Zahirović v. Croatia* (no. 58590/11, 25 April 2013), in which a violation of Article 6 had been found in a similar context, in that, unlike in that case, in the present case the prosecution service had entirely lost their appeal and the appellate court had in fact overturned the first-instance judgment and ruled in the applicant's favour.

40. As to the observations by the prosecution service on the applicant's appeal on points of law, the Government emphasised that the applicant's appeal had been rejected as none of the grounds of appeal relied on by him had been established. The assessment of the applicant's appeal had accordingly been limited to the question of compliance with the statutory grounds for appealing on points of law. This was a formal assessment within a framework strictly defined by statute. In their view, this assessment did not allow for a genuine legal discussion and its result could not have been affected by any further comments from the applicant. The Government argued that the point last mentioned further distinguished the present case from that of *Zahirović* (cited above).

41. In response, the applicant reiterated that the observations of the prosecution service in reply to his appeal had been kept outside the case file in an irregular fashion and that, accordingly, he could not have had and had not had a chance to familiarise himself with them when inspecting the file on 7 November 2008 (see paragraphs 14 and 17 above). He considered that

those observations had contained extensive legal and factual comments on his case and that, on that account, his case was similar to *Lonić v. Croatia* (no. 8067/12, 4 December 2014), in which a violation of Article 6 had been found in a similar context.

42. As to the Government's argument, in relation to the observations by the prosecution service on his appeal on points of law, the applicant submitted that, as acknowledged by the cassation court itself, his appeal had been admissible. The fact that none of the grounds on which he had appealed had been established had not meant that the underlying analysis by the cassation court had been limited to formal matters. On the contrary, it had involved assessment of substantive matters going to the merits of his case. Moreover, in those non-served observations, the prosecution service had referred to their above-mentioned non-served observations on his appeal. The applicant considered that the situation had been further aggravated by the fact that, in his amendment to his appeal on points of law, he had specifically noted that if any observations had been filed, he had not received a copy of them.

43. In a further reply, the Government pointed out that in its decision the cassation court had specifically referred to Article 382 (c) of the Code of Criminal Procedure and that under that provision the rejection of the applicant's appeal on points of law had been "without examination of the matter", which in their submission had meant that the examination of the applicant's appeal on points of law by the cassation court had been limited to formal aspects strictly defined by law as they had argued before.

44. The Court notes that the applicant's complaint of a lack of an adversarial trial concerns two stages of his proceedings, that on his appeal, and that on his appeal on points of law. The common denominator of these two facets of his complaint is the fact, undisputed between the parties, that the observations of the prosecution service on his appeal and appeal on points of law were not served on him.

45. As to the specific observations in question, the Court notes that in those of 15 August 2008 the prosecution service replied to the applicant's appeal by commenting on various legal and evidentiary aspects of the case and in those of 11 March 2010 they briefly addressed all of the grounds of the applicant's appeal on points of law. Both observations thus undoubtedly constituted reasoned opinions on the merits of the applicant's case, manifestly aiming at influencing the decision of the appellate court (see *Zahirović*, cited above, § 48, with further references). Moreover, in the latter observations the prosecution service referred to the former, in view of which the latter can be seen, at least in part, as an extension of the former.

46. The applicant clearly had an interest in receiving a copy of these observations and the Court has found no special circumstances on account of which the observations in question were not to be served on the applicant

(see *Trančíková v. Slovakia*, no. 17127/12, § 46, 13 January 2015). As the Government's specific arguments, the Court finds as follows.

47. Claiming on the one hand that the applicant had had the opportunity to familiarise himself with the observations of 15 August 2008 when he had inspected his case file on 7 November 2008, the Government on the other hand have offered nothing to combat the applicant's substantiated assertion indicating that on that day those observations had not been included in the case file (see paragraph 14 above). Moreover, the applicant's argument to that effect in his appeal on points of law had not received any conclusive answer (see paragraph 20 above). The Government's objection thus cannot be sustained.

48. At the same time, the Court finds it being of no relevance whether or not the applicant had had an unrestricted opportunity to advance his case at the appellate hearing (see a summary of the applicable principle in, for example, *Zahirović*, cited above, §§ 42 and 43, with further references).

49. The Court likewise finds it immaterial that the prosecution service's own appeal was unsuccessful and that the appellate court ultimately reduced the applicant's penalty. What matters is that the applicant's appeal was successful only in part and that the impugned observations contained comments on its part that was unsuccessful (the question of guilt).

50. As to the Government's argument in relation to the observations of 11 March 2010, the Court notes first of all that they have not contested the applicability of Article 6 of the Convention to these cassation proceedings *ratione materiae*, but have rather aimed at establishing that the complaint was unfounded. Neither have any doubts as to the applicability of that provision been detected otherwise (see, *mutatis mutandis*, *Hansen v. Norway*, no. 15319/09, §§ 55-6, 2 October 2014, and contrast *Valchev and Others v. Bulgaria* (dec.), no. 47450/11 and 2 others, 21 January 2014).

51. In particular, the Court observes that the cassation court found that the applicant's appeal on points of law was admissible, but that none of the grounds for appealing had been established. This was a situation provided for by Article 382 (c) of the Code of Criminal Procedure, which must be distinguished from those under the other provisions of that Article. In particular, Article 382 (c) relates to grounds of appeal, as provided under Article 371, which if found establish had directly lead to the quashing of the contested decision under Article 386 (see paragraphs 16, 26 and 27 above). In contrast to that, the other situations envisaged by Article 382 are formal in nature and do not lead to the examination of the "matter" in the sense of the actual grounds of the appeal in question. The Court therefore cannot subscribe to the Government's argument that the legal discussion before the cassation court in respect of the applicant's appeal had been fundamentally limited.

52. It follows that the failure to send a copy of the observations of 15 August 2008 and 11 March 2010 to the applicant denied him the right to a fair hearing.

2. Witness M.

53. The applicant argued that his proceedings had been unfair in that his conviction had to a significant extent rested on evidence from M., who had changed his evidence in the course of the proceedings in order to benefit from a deal with the prosecution.

54. The Government argued that the use of statements made by witnesses in exchange for immunity or other advantages did not in itself suffice to render proceedings unfair. In that regard, they relied on the Court's decisions such as, for example, that in *Lorsé v. the Netherlands* ((dec.), no. 44484/98, 27 October 2004). They acknowledged that M. had originally testified differently, and had changed his version after he had been charged with the murder of O. in other proceedings. However, the domestic courts had been well aware of his procedural status, had accordingly scrutinised the evidence he had given well, and had assessed it in conjunction with other evidence available. The Government pointed out that the evidence from M. had been merely one component of a body of evidence against the applicant and submitted that the latter's submissions in his defence had been properly examined and dismissed at the domestic level.

Moreover, when M. had changed his version and had started incriminating the applicant, in 2006, M.'s prosecution in another case had only been stayed and he could not have had any certainty of receiving immunity. To the contrary, by changing his version he had also incriminated himself, in return for which he had received no advantage, and could accordingly not have had any fraudulent motivation to testify against the applicant.

In any event, the Government reiterated that it was not the function of the Court 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.

55. The applicant replied by emphasising that he had twice been acquitted at first instance, before M. had changed his versions, that he had been convicted afterwards, and that the evidence from M. had been pivotal in the body of evidence against him, any other evidence being indirect and hearsay. He considered that the change of version by M. had been the result of the pressure exercised on him by having charged him with the murder of O. (see paragraph 23 above) and having remanded him in detention on that charge. He reiterated that the investigation in respect of M. had eventually been closed just as he had been released from detention pending trial. As at the national level, the applicant contended that there had been factual

inconsistencies in the evidence from M. as well as between that and other evidence in the case. In his view, the domestic courts had failed to examine and assess these inconsistencies properly. The applicant further pointed out that the investigation in respect of M. had eventually been closed and the charges, which had consisted of two murder charges and one charge of perjury, had been dropped.

56. The Court has summarised the applicable general principles in *Habran and Dalem v. Belgium* (nos. 43000/11 and 49380/11, § 94-6, 17 January 2017, with further references) as follows;

- The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings.

- Its task under Article 19 is to ensure the observance of the obligations undertaken by the States Parties to the Convention. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence accepted by the domestic courts in order to establish guilt, may be admissible. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law.

- In making its assessment, the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interests of the public and the victims that crime is properly prosecuted and, where necessary, to the rights of witnesses.

57. In the present case, the applicant objects that his conviction was to a significant extent based on evidence from M. who, in the applicant's submission, had been motivated by the prosecution falsely to testify against the applicant in return for impunity.

58. The Court notes, first of all, the Government's argument that the evidence from M. was just one component of a body of evidence incriminating the applicant. Nevertheless, it has not been disputed that the other evidence was indirect, that it formed a part of a whole only when considered with the direct evidence from M., and that a decisive turning point in the trial came when M. changed his version and started incriminating the applicant. Accordingly, the Court finds that the evidence from M. constituted, if not the sole, then at least the decisive evidence against the applicant.

59. The Court reiterates that the use of statements given by witnesses in return for immunity or other advantages may cast doubt on the fairness of the proceedings against the accused and can raise difficult issues to the extent that, by their very nature, such statements are open to manipulation and may be made purely in order to obtain the advantages offered in exchange, or for personal revenge. The risk that a person might be accused and tried on the basis of unverified allegations that are not necessarily

disinterested must not, therefore, be underestimated (see *Habran and Dalem*, cited above, § 100, with further references).

60. Accordingly, on the facts of the present case, the Court considers it appropriate to continue its analysis by looking at how the applicant's objection was addressed at the domestic level and then to examine whether the domestic authorities may be said to have subjected the matter to an adequate degree of scrutiny.

61. In doing so, the Court notes the order of events, namely that during the applicant's trial and prior to his conviction (i) M. was charged with the murder of O. and detained pending trial on that charge, had been released from detention and the investigation in respect of that charge had been closed upon changing his version of events to incriminate the applicant, and (ii) the bringing of charges against M. for being the applicant's accomplice in the murder of K. was temporarily suspended. It was only after the applicant's conviction, although prior to the determination of his appeal on points of law, that (i) M. was investigated for perjury, (ii) the decision to open that investigation was quashed, (iii) M. was formally charged with murder of K., and (iv) his prosecution for that murder was terminated with final effect.

62. Accordingly, at the time of his conviction and appeal, the benefits M. had allegedly obtained in return for incriminating the applicant consisted of the charge of the murder of O. being dropped, the investigation being closed, and his being released from detention pending trial on that charge, as well as of having the bringing of charges for the murder of K. suspended.

63. The Court notes that the applicant's arguments challenging the credibility of M. as a witness before the domestic courts were only examined by the appellate court (see paragraph 15 above) and that he received no specific reply in that connection from the courts that dealt with his case afterwards, in particular the cassation court and the Constitutional Court (see paragraphs 20 and 22 above).

64. As to the appellate court, it found that by changing his previous position in the applicant's trial M. had merely incriminated himself in addition to the applicant, and that he had obtained no advantage since his prosecution for the murder of K. had only been suspended. Moreover, the appellate court found that the evidence from M. had been corroborated by other incriminating evidence (see paragraph 15 above).

65. In that connection, the Court notes first of all that the scrutiny by the appellate court appears to have been limited to any advantage M. might have received in the context of the trial for the murder of K. and did not in any way examine any advantage he might have received in the context of the prosecution for the murder of O. No details in relation to that prosecution have been disclosed to the Court. But it has remained an uncontested allegation of fact that after he had changed his version the respective charge was dropped, the investigation was closed and he was

released from detention pending trial. None of the domestic courts dealing with the applicant's case took any position as regards this fact.

66. In these circumstances, the domestic courts cannot be said to have scrutinised the applicant's argument with reference to its factual basis in its entirety.

67. Moreover, the Court considers that the domestic courts' conclusion that M. did not gain any advantage is contradicted by the subsequent development consisting of the quashing of the decision to open an investigation into the suspicion that he had committed the offence of perjury and the termination of his prosecution for the murder of K., which was expressly and specifically in return for his testimony. As has been noted above, it is true that the outcome of this development postdates the applicant's trial. However, already during the applicant's trial, M.'s prosecution for the murder of K. was suspended. This was a preliminary step towards the ultimate termination of that prosecution. Moreover, the Court notes that the advantages M. obtained were extended to him under the authority of the prosecution service and that the prosecution service is organised in Slovakia as a single hierarchy (see paragraph 28 above). This presupposes a degree of coordination, which in the present case is further suggested by a certain personal overlap in the form of the involvement of Š., the prosecutor in the various proceedings (see paragraphs 13, 15 and 24 above). In the absence of any argument on the part of the Government to the contrary, the Court finds that the preliminary advantage M. had the benefit of at the time of the applicant's trial cannot be dissociated from the overall advantage he received in relation to his own prosecution for the murder of K. in return for his testimony incriminating the applicant.

68. At the same time, the Court notes that it has been neither argued nor established otherwise that any particular consideration was given in the assessment of the evidence from M. in the applicant's trial to the fact that it originated from a witness who was, by his own account, himself involved in the offence. To the contrary, it would rather appear that this evidence was examined and assessed by the domestic courts as any ordinary evidence would be.

69. In that regard, the Court notes that the intensity of scrutiny called for with regard to evidence from an accomplice has a correlation with the importance of the advantage that the accomplice obtains in return for the evidence he or she gives (see *Erdem v. Germany* (dec.), no. 38321/97, 9 December 1999). In the present case, the advantage obtained by M. went beyond a reduction of sentence or financial benefit, but practically meant impunity for an offence of unlawful killing.

70. As regards any judicial review of matters concerning M.'s plea-bargain arrangements in the applicant's own trial, as has been noted above, the review by the appellate court was inadequate (contrast *Habran and Dalem*, cited above, §§ 113 and 115), whereas the higher courts failed

to respond to his argument altogether. Moreover, it is noted that all the decisions concerning the prosecution of M. were taken under the sole responsibility of the prosecution service with no element of any judicial control.

71. Accordingly, in view of the importance of the evidence from M. in the applicant's trial, the Court finds that, on the specific facts of the present case, its use at the trial was not accompanied by appropriate safeguards so as to ensure the overall fairness of the proceedings (contrast *Habran and Dalem*, cited above, § 117).

3. *Overall conclusion*

72. The Court concludes that that the applicant's trial fell short of the guarantee of fairness under Article 6 of the Convention.

There has accordingly been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

74. The applicant claimed 2,187.64 euros (EUR) in respect of pecuniary damage. This amount consisted of the costs of his detention on remand and some other amounts. In addition, he claimed EUR 9,000 and EUR 50,000 in respect of non-pecuniary damage for, respectively, unlawful detention and arbitrary conviction.

75. The Government contested the claim in respect of pecuniary damage and the part of the claim in respect of non-pecuniary damage concerning the applicant's detention as lacking a causal link to the subject matter of the application. As for the remainder of the applicant's claim in respect of non-pecuniary damage, the Government considered that it was manifestly overstated and that, in any event, the most suitable form of redress for the applicant's complaint would be the reopening of his trial.

76. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. There is likewise no causal link between that violation and any non-pecuniary damage allegedly due to the applicant's detention. These claims must accordingly be rejected. As to the remainder of the applicant's claim, the Court notes that, following its above finding under Article 6, domestic law entitles the applicant to seek the reopening of his trial and finds that that possibility constitutes the most

appropriate form of redress in the circumstances of his case (see *Zachar and Čierny v. Slovakia*, nos. 29376/12 and 29384/12, § 85, 21 July 2015, with further references). However, at the same time, the Court finds that the applicant must have sustained non-pecuniary damage not entirely compensable by such a re-opening. Accordingly, on an equitable basis, it awards him EUR 5,000, plus any tax that may be chargeable, under that head.

B. Costs and expenses

77. The applicant also claimed EUR 36,114.94 for the legal costs incurred before the domestic courts, and an unspecified amount for the legal costs incurred before the Court. Moreover, he claimed EUR 1,716 for the translation costs incurred before the Court.

78. The Government submitted that the claims should be determined in accordance with the Court's case-law. They argued that the claim in respect of the legal costs before the Court had not been specified. They submitted that they had no objections in respect of the claim concerning the translation costs.

79. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,000, plus any tax that may be chargeable to the applicant, covering costs under all heads.

C. Default interest

80. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning alleged unfairness of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*
  (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Stephen Phillips
Registrar

Paul Lemmens
President