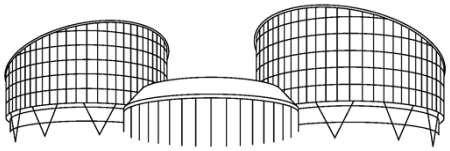

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ERIK ADAMČO v. SLOVAKIA

(Application no. 19990/20)

JUDGMENT

Art 6 (criminal) • Fair hearing • Applicant's conviction based to a significant degree on incriminating evidence by accomplices arising from cooperation with the prosecution in return for immunity or other advantages • Self-serving motives on the part of the accomplices not ruled out • No discernible individual attention given by domestic courts to scope and nature of advantages obtained • Reliance on impugned evidence based on insufficient reasoning and not accompanied by appropriate safeguards

STRASBOURG

1 June 2023

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

In the case of Erik Adamčo v. Slovakia,

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

Marko Bošnjak, *President*,
Péter Paczolay,
Alena Poláčková,
Lətif Hüseynov,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 19990/20) 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 Erik Adamčo ("the applicant"), on 27 April 2020;

the decision to give notice of the application to the Government of the Slovak Republic ("the Government");

the parties' observations;

Having deliberated in private on 9 May 2023,

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

INTRODUCTION

1. The application concerns the alleged unfairness of criminal proceedings in which the applicant was convicted of two counts of complicity in murder, committed in an organised-crime context, in view of the role played in those proceedings by evidence from accomplices who had agreed to cooperate with the prosecution in exchange for immunity or other advantages (*výhody*). In Slovakia, such people are referred to as cooperating accused (*spolupracujúci obvinení*), cooperating witnesses (*spolupracujúci svedkovia*) or colloquially as "penitents" (*kajúcnici*). It raises issues under Article 6 of the Convention.

THE FACTS

2. The applicant was born in 1976 and is currently serving a prison sentence in Dubnica nad Váhom. He was represented by Mr M. Kuzma, a lawyer practising in Košice.

3. The Government were represented by their Agent, Ms M. Bálintová.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. As later established by the courts, in 1997 an individual, A, was killed near a mountain pass in central Slovakia. Several people, led by B, were directly involved in the killing. The courts also established that A had been driven to the meeting with his killers by three people, including the applicant and C.

6. In 1999 another individual, D, was killed in front of a hotel by a lake in eastern Slovakia. The applicant's brother and another person, E, were tried for this murder but acquitted for lack of evidence. Their acquittal became final in 2010.

7. On 9 October 2013, following his arrest and remand in custody for another unrelated murder, E confessed to D's murder and gave evidence in that matter against the applicant and his brother.

8. On 11 December 2014 the Public Prosecution Service ("the PPS") applied to reopen the proceedings leading to the acquittal of E and the applicant's brother.

9. On 9 March 2016 the Košice I District Court refused to order a retrial on the grounds that E's confession was inconsistent with the evidence obtained in the original trial. The inconsistencies included, in particular, the fact that E had claimed to have shot D from the front whereas he had actually been shot in the back. On 16 May 2016, following an appeal by the PPS, the court's decision was upheld.

10. Meanwhile, on 13 March 2014 B, who at that time was serving a life sentence for several other murders, confessed to having ordered that A be brought to him, with a view to having him killed. He stated that A had been brought to him by three people, including C and the applicant.

11. C gave evidence on 29 May 2014 about his and the applicant's involvement in the taking of A to B.

12. The applicant himself has at all stages, domestically and before the Court, categorically denied any involvement in the killings.

II. PROCEEDINGS AGAINST THE APPLICANT

A. Charges and trial

13. On 20 and 24 June 2014 the applicant was charged with two counts of complicity in murder for his suspected involvement in the killings of A and D. The charges were based, *inter alia*, on the statements of B, C and E. On 21 April 2015 a bill of indictment was filed in the matter.

14. The District Court heard the case between 26 April 2015 and 2 March 2017, taking oral evidence from B, C and E (who were examined and cross-examined) and numerous witnesses, as well as other types of evidence.

This included expert evidence mainly concerning the cause and mechanism of the deaths of A and D and the psychological profiles of the accused.

15. In his defence, the applicant challenged what he considered to be inconsistencies in the evidence from B, C and E.

In particular, he maintained that B and C had given conflicting accounts as to the number and identity of those involved in A's killing, and it had been proven that four of the people they had implicated had an alibi for the time of the murder. Also, B and C had contradicted each other as to the motive for A's killing, and none of the alternative motives put forward by the PPS had anything to do with the applicant. As he himself had been released from prison the day before A's disappearance, he had had no previous issues with him and could not have been part of any plans to harm him. Furthermore, B's account as to the time of A's killing differed from the time of death established by experts by at least a day (see paragraph 19 below).

As regards D's murder, of which the applicant had been accused by E, the latter's account that he had shot D from the front contradicted the experts' finding that D had been shot in the back. In addition, E's statements as to the presence or absence of other persons at the crime scene, his escape route, and his claim that the applicant had telephoned his brother shortly before the murder were inconsistent with other evidence. By force of a final and binding judgment, E had previously been acquitted and a retrial had not been allowed (see paragraphs 6 and 9 above).

16. On 2 March 2017 the Žilina District Court found the applicant guilty and sentenced him to twenty-five years' imprisonment. It found that he had been involved in forcibly taking A to B, knowing that A was going to be killed, that he – together with his brother – had hired E to kill D, and that he had assisted E in carrying out the killing.

17. The conviction was mainly based on evidence from direct participants in the murders, namely B, C and E, as well as from other witnesses who knew of the murders from the perpetrators.

18. In particular, as regards A's murder, the applicant was implicated by C, who had stated that while A was being taken to B, the applicant had known that A would not come back alive. This would have been clear to him from the fact that A had been driven in a car that was not his own and that his own car had been taken to be parked in a random location, which was a common method of covering up the murder of a car owner. In addition, B had also confirmed that the applicant had been among the people who had brought A to him, and that he had heard that the relationship between the two men had deteriorated and that the applicant had had an interest in having A killed.

19. In his death certificate, A was certified as having died on 11 July 1997, and two experts had established that he had died on the night of 10 to 11 July 1997. While it was true that B had stated that A had with certainty been killed shortly after having been brought to him, on the night of 9 to 10 July 1997, at

a hearing one of the experts had admitted that, although this would not happen to her, an error in assessment could never be completely ruled out.

20. As regards D's murder, the applicant was directly implicated by E, who had confessed to having been hired to kill D by the applicant and his brother and to having killed him with the applicant's assistance.

21. In so far as E had claimed to have shot D from the front, even though the gunshot wound documented had hit him in the back, the court considered that D might have turned around at the moment of the gunshot, which might have gone unnoticed by E. Any inconsistencies concerning the crime scene such as the position of the car next to which D had been killed, E's position and the presence or absence of other persons were not essential facts and had to be assessed in the light of the amount of time that had passed since the murder, the darkness in which it had taken place and the stress under which it had placed E.

Even though the telephone records available did not support E's claim that the applicant had telephoned his brother shortly before the murder, there was nothing to prove that the applicant and his brother had not used other telephone lines registered in other people's names, which had been common practice within their milieu.

Although it was true that E had been acquitted in his own trial, this had been in an evidentiary situation different from that obtaining in the case against the applicant. Although it was likewise true that a retrial had not been allowed, E had confessed to the prosecuting authorities and stated before the courts that he had nothing to add to that confession.

22. In response to the applicant's objection that the evidence from B, C and E was in fact evidence from perpetrators who had received advantages for giving evidence for the prosecution, the court stated that it had examined that evidence "particularly carefully" and looked "especially carefully" into the internal logic and coherence of their statements and their consistency with the other evidence available.

The fact that the witnesses in question enjoyed advantages was in accordance with the law. These witnesses had incriminated not only the applicant, but also others, especially themselves. It was illogical for them to have done so untruthfully. Moreover, the District Court noted that E had explained why he had changed his original version into incriminating the applicant.

Although extremely serious offences were involved, they had been commonplace for the witnesses in question at the given time, so any inconsistencies in the evidence from them were insignificant.

Had these witnesses made rehearsed statements under pressure from the investigators, there would have been no inconsistencies. Possible inconsistencies with objective evidence therefore did not undermine the credibility of their evidence, but showed that the witnesses had described what they had in fact experienced.

B. Appeal

23. The applicant appealed to the Žilina Regional Court, reiterating his previous arguments and adding that since B, C and E were in fact perpetrators, they could not act as witnesses. Their testimony was accordingly inadmissible as evidence. Moreover, in view of their status as perpetrators, these individuals had had access to the investigation file and had thus been able to adjust their testimony to the authorities' requirements.

24. The applicant argued that the admissibility in evidence of statements by cooperating witnesses depended on a number of factors, including clarity as to the circumstances and conditions under which they were given, and the proportionality of any advantages granted to such witnesses. In the proceedings at hand, no information was available on any advantages or conditions linked to the evidence given by B, C and E.

25. Moreover, the applicant pointed out that he and his brother had been prosecuted in numerous sets of proceedings, that these prosecutions had relied on evidence from a great number of cooperating perpetrators and that none of these perpetrators had ever received any punishment. This included C (in the case of the murder of A) and E (in the case of the murder of D and three other murderers – see paragraphs 7 above and 36 below) and, in fact, amounted to immunity, which was clearly disproportionate and, moreover, had been provided under the authority of the investigators and the PPS, with no element of judicial control.

26. On 27 June 2017 the Regional Court dismissed the appeal. It found that the applicant's arguments mainly related to the assessment of evidence and the reasoning behind his conviction. It went on to cite extensive passages of the first-instance judgment, endorsing the conclusions and adding that it was neither ruled out that a conviction be based to a defining extent on accomplice evidence nor required that such evidence be supported by other evidence. What was essential was that such evidence be subjected to thorough scrutiny. In the case at hand, the applicant's conviction was based on evidence from a set of cooperating witnesses, which was confronted with a body of other evidence. In that process, the evidence from the cooperating witnesses was subject to the "free assessment of evidence" within the meaning of Article 2 § 12 of the Code of Criminal Procedure "just as any other piece of evidence".

C. Appeal on points of law

27. The applicant appealed on points of law. Reiterating his earlier arguments, he added that the Regional Court had merely endorsed, in abstract terms, the reasoning of the District Court, without addressing in any concrete way his specific arguments. He also argued that the motive for B to give evidence for the prosecution had been to convert his life sentence.

28. In the applicant's submission, accomplice evidence was commonly seen with scepticism, which was reflected, for example, in the provisions of the Italian Code of Criminal Procedure (Article 192), which provided that, as a matter of principle, statements made by either the co-accused charged with the same offence or a person accused in joined proceedings had to be corroborated by other evidence confirming their reliability. He further contended that the legitimate purpose of accomplice evidence was to link or lead to the discovery of other and more solid evidence. However, in his case, the evidence from cooperating witnesses had been used to hold together other even weaker evidence.

29. On 17 April 2019 the Supreme Court declared the appeal on points of law inadmissible. The nature of its review did not allow for the re-examination of accomplice evidence as such. The acceptability of such evidence reflected the interest of society in the investigation and prosecution of the most dangerous offenders. Such evidence was to be assessed under the method of free assessment of evidence like any other evidence. This method did not prescribe the manner in which a given fact was to be established. It was to be handled on a case-by-case basis, taking into account the individual evidentiary situation.

D. Constitutional complaint

30. The applicant further pursued his case by complaining to the Constitutional Court that the lower courts' response to his arguments was inadequate, recapitulating the remainder of his earlier arguments and contending that there had been a violation of, *inter alia*, his right to a fair trial. As regards the question of motivation of the collaborating witnesses to give evidence for the prosecution, he added that E had incriminated him, instead of telling the truth, in return for his own *de facto* immunity.

31. On 17 December 2019 the Constitutional Court declared the complaint inadmissible. It cited extensively from the reasoning behind the challenged judgments, concluding that the applicant's arguments came across as unconvincing and, at most, purposive. The conclusions of the lower courts were compatible with the applicable constitutional guarantees. In so far as the applicant had relied on the Court's judgment in the case of his brother (see *Adamčo v. Slovakia*, no. 45084/14, 12 November 2019), the Constitutional Court opined that the lower courts had assessed the accomplice evidence in its overall context and that "it was not possible to conclude that they had assessed it like any other evidence or that they had not taken into account the possible advantages gained by the cooperating witnesses".

III. COOPERATING WITNESSES

A. Witness B

32. Following his confession in the applicant's trial (see paragraph 10 above), on 30 March 2015 B was charged with complicity in A's murder, and it was decided that he would be prosecuted in a separate set of proceedings. No further information was made available to the Court about the course and outcome (if any) of those proceedings.

B. Witness C

33. On 23 June 2014 it was decided that the bringing of charges against C in relation to A's killing would be temporarily suspended under Article 205 of the Code of Criminal Procedure (Law. no. 301/2005 Coll., as amended – "the CCP") on the grounds that he had significantly contributed to the investigation of organised crime. It appears that charges were eventually brought against him and that in June 2022 the proceedings against him were ongoing at their pre-trial stage. However, no further details were made available to the Court.

C. Witness E

34. On 7 September 2013 E was remanded in custody for another murder.

35. On 17 December 2013 the PPS released him from detention and on 8 April 2014 his prosecution for that murder was stayed. The decisions referred, *inter alia*, to the fact that E had been placed in the witness-protection programme in view of which there was no longer any risk that he would flee, and to Article 228 § 3 (f) of the CCP allowing the prosecution of those who significantly contributed to the investigation of organised crime to be stayed.

36. In addition, E was prosecuted for two other murders, but on 17 June 2015 the proceedings against him were stayed under Article 228 § 3 of the CCP on the basis that he had significantly contributed to the investigation of these and other matters.

37. No information was made available to the Court as to whether charges were eventually brought against him for the three murders.

38. Meanwhile, in a report of 29 March 2015 obtained in the applicant's trial, an expert in forensic psychology noted that the reasons why E had decided to cooperate with the inquiry were twofold. First, by giving evidence, he wished to convince the authorities of his trustworthiness so that they would accept his version of events in his own prosecution for other offences. Second, if he were granted immunity, he could seek treatment for his health problems and thereby prolong his life. His intellectual capacity and memory were not impaired, and it was for the courts to establish the truthfulness of his statements.

39. At hearings held on 29 October and 9 December 2015 in the applicant's trial, E explained that he had decided to cooperate with the PPS because there had been attempts to link him to offences with which he had nothing to do, and he had decided to defend himself by divulging the truth.

RELEVANT LEGAL FRAMEWORK

CODE OF CRIMINAL PROCEDURE (LAW. NO. 301/2005 COLL., AS AMENDED)

40. Article 2 sets out the fundamental principles of criminal procedure. Article 2 § 12 provides that the prosecuting authorities (*orgány činné v trestnom konaní*) and the courts assess evidence obtained lawfully according to their inner conviction based on careful consideration of all the circumstances of a given case, individually and in their entirety, regardless of whether the evidence has been obtained by the court, the prosecuting authorities or any of the parties.

41. Article 205 regulates the temporary suspension of the bringing of charges as follows. Under Article 205 § 1, if the bringing of charges would substantially impede the investigation of certain offences, including offences committed by an organised or criminal group and the offence of premeditated murder, the police may suspend, for the necessary period, the bringing of charges for that or another offence against a person who has significantly contributed to the investigation of any of those offences. The measure is subject to the consent of the PPS. Under Article 205 § 3, if the reasons for the suspension cease to exist, the police will, on the instructions of the PPS, bring charges immediately.

42. Under Article 228 § 3, the police, with the prior consent of the PPS, may stay the criminal prosecution for those or other offences against a person facing charges if the accused has significantly contributed to the investigation of certain offences, including the offence of setting up an organised or criminal group, offences committed by such a group and the offence of premeditated murder. Under Article 228 § 5, if the reasons for the suspension cease to exist, the criminal prosecution is to resume.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

43. The applicant complained under Article 6 §§ 1 and 3 (d) that the proceedings against him had been unfair in that his conviction had been arbitrarily based on the testimony of witnesses cooperating with the prosecution in exchange for certain advantages, including immunity. The

Court finds that, on the facts, this complaint is to be examined under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

44. The Government considered the application manifestly ill-founded for the reasons indicated below.

45. The applicant disagreed and reiterated his complaints.

46. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

47. The applicant complained that his conviction had been based on evidence from cooperating witnesses who had testified against him in return for immunity and other advantages. This evidence had not been supported by any other direct evidence, and any other indirect evidence would not have held together without the testimony of B, C, and E, which had accordingly been instrumental for his conviction.

48. While the Regional Court and the Supreme Court had held that that evidence had to be looked upon like any other piece of evidence, the trial court and the Constitutional Court had suggested that this was not the case. However, irrespective of the language used, none of the courts had in fact demonstrated any examination other than by the ordinary method of free assessment of evidence. This had included, but had not been limited to, a failure to look into the profile and track record of those witnesses.

49. The applicant had been unable to defend himself against this since the courts had failed genuinely to examine the lawfulness and proportionality of the advantages obtained by those witnesses, the arrangements in question having no statutory framework and having been made under the exclusive authority of the prosecuting authorities, with no element of judicial control. The witness-protection agreement had not been disclosed to the courts, and the applicant had been unable to cross-examine witness E in relation to it. Accomplice evidence did not gain credibility by being supported by other evidence of the same nature. In view of their status as accomplices, witnesses giving such evidence had access to the case file, and it was accordingly open to them to adjust their statements to the findings and expectations of the authorities.

(b) The Government

50. Recapitulating the course and outcome of the domestic proceedings, the Government pointed out that it was not the Court's task to review the domestic courts' conclusions as to the admissibility and assessment of the evidence before them, but to verify that the fairness of the proceedings as a whole had been respected.

51. In their submission, the applicant's conviction had been based on a complex body of evidence and that from the cooperating witnesses B, C and E had been neither the sole nor decisive evidence against him. The evidence from these witnesses had been supported by other hearsay evidence and expert evidence. Nevertheless, in their further observations, the Government referred to B, C and E as key witnesses.

52. The Government opined that the mere admission in evidence of statements from cooperating witnesses did not render the proceedings *a priori* incompatible with the requirements of Article 6 of the Convention, that the domestic courts had been well aware of the need to examine such evidence with particular diligence and that they had duly done so, including the reasons why those witnesses had given evidence for the prosecution and under what circumstances. Moreover, they had been cross-examined on these questions. At all stages of the proceedings, the applicant's defence had actively exercised his fair-trial rights in relation to any relevant issues.

53. As regards any advantages that the cooperating witnesses had obtained in return for their cooperation with the authorities, the Government referred to the reasoning of the domestic courts as regards their credibility.

2. The Court's assessment

(a) General principles

54. While Article 6 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 (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140; *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX; and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017).

55. There is a distinction to be made between the admissibility of evidence (that is to say the question of which elements of proof may be submitted to the relevant court for its consideration) and the rights of the defence in respect of evidence which in fact has been submitted to the court. There is also a distinction between the latter (that is to say whether the rights of defence have been properly ensured in respect of the evidence taken) and the subsequent assessment of that evidence by the court once the proceedings have been concluded. From the perspective of the rights of the defence, issues under Article 6 may arise in terms of whether the evidence produced for or against the defendant was presented in such a way as to ensure a fair trial (see

Ayetullah Ay v. Turkey, nos. 29084/07 and 1191/08, § 125, 27 October 2020, with further references).

56. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009; *Lee Davies v. Belgium*, no. 18704/05, § 41, 28 July 2009; and *Prade v. Germany*, no. 7215/10, § 33, 3 March 2016).

57. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be established, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Szilagyi v. Romania* (dec.), no. 30164/04, 17 December 2013). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, among other authorities, *Bykov*, cited above, § 90; *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010; and *Ayetullah Ay*, cited above, § 126). While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Lee Davies*, cited above, § 42; *Bykov*, cited above, § 90; and *Bašić v. Croatia*, no. 22251/13, § 48, 25 October 2016). In this connection, it may also be reiterated that the burden of proof is on the prosecution, and any doubt should benefit the accused (see *Ayetullah Ay*, cited above, § 126).

58. When determining whether the proceedings as a whole have been fair, the weight of the public interest in the investigation and punishment of the particular offence in issue may be taken into consideration and be weighed against the individual interest that the evidence against him be gathered lawfully (see *Jalloh*, cited above, § 97, and *Prade*, cited above, § 35).

59. Furthermore, the Court also reiterates that the Convention does not prohibit a domestic court from relying on incriminating testimony given by an accomplice, even if that witness has been known to move in criminal circles (see *Xenofontos and Others v. Cyprus*, nos. 68725/16, 74339/16 and 74359/16, §§ 77 and 79, 25 October 2022, with further references). However, 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 v. Belgium*, nos. 43000/11 and 49380/11, § 100, 17 January 2017).

(b) Application of the general principles to the facts of the case

60. In the instant case, the applicant was convicted in 2017 of two counts of complicity in murder relating to the deaths of two people in 1997 and 1999. In view of the passage of time, the organised-crime background of the offences and other factors, the prosecution was faced with significant evidentiary challenges and the conviction, by definition, rested mainly on witness evidence. While admitting that B, C and E had been key witnesses, the Government nevertheless argued that the conviction had not rested solely or to a decisive degree on the evidence from them. In that regard, they referred to evidence from witnesses and experts, as well as other types of evidence.

61. The Court notes that the expert evidence in the case mainly concerned the cause and mechanism of death of the victims and that it had no direct bearing on who had killed them. The fact that the victims had died and the cause and mechanism of death being uncontested, and B, C, and E having confessed to having been responsible for or otherwise directly involved in the killings, the decisive factor from the point of view of the applicant's criminal liability was his link to the killings, if any. In that regard, no expert evidence or any other kind of evidence of an objective nature was provided. As to A's murder, the courts established a link since the applicant had been among those who had taken him to B, knowing that he was going to be killed. This link rested on statements from B and C. As regards D's murder, the applicant's link to it as the contractor and accomplice rested on the evidence from E. Any other witness evidence was hearsay. In these circumstances, the Court accepts that the applicant's conviction was, to a significant degree, based on evidence from B, C and E.

62. As that evidence came from accomplices who had been said to have obtained advantages in return for incriminating the applicant, the Court must enquire into how the applicant's objections in relation to that evidence were addressed at domestic level and whether the domestic authorities subjected the matter to an adequate degree of scrutiny (see *Adamčo v. Slovakia*, no. 45084/14, § 59, 12 November 2019), bearing in mind that the required intensity of such scrutiny correlates 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).

63. In that regard, the Court notes that in its judgment the District Court pointed out in general terms that it had examined the evidence from B, C and E "particularly carefully" and looked "especially carefully" into the internal logic and coherence of their statements and their consistency with the other

evidence available (see paragraph 22 above). The Constitutional Court found that "it was not possible to conclude that [the courts] had assessed [that evidence] like any other evidence or that they had not taken into account the possible advantages gained by the cooperating witnesses" (see paragraph 31 above). As inconclusive as that formulation may be, there has been no explanation as to the functional relationship of the given approach to the position taken by the appellate courts, which held that accomplice evidence was subject to "free assessment of evidence" on a case-by-case-basis just as any other piece of evidence. Nevertheless, irrespective of the denomination of the given evidence-assessment method in terms of domestic law and practice, what matters is how the accomplice evidence was handled by the domestic courts, in the light of the applicant's objections, *in concreto*.

64. As regards B and C, the applicant objected that they had made differing statements as regards the number and identity of those who had participated in A's killing and the motives behind it. Moreover, the applicant contended that there was an inconsistency between the evidence from B and from expert witnesses as regards A's time of death, that his reasons for giving evidence for the prosecution had had to do with his desire to convert his life sentence and that C had been motivated by seeking to avoid his own prosecution for A's murder. The applicant also objected that the advantages B and C had obtained for incriminating him were disproportionate (see paragraphs 15, 24, 25, 27 and 30 above).

65. While the courts did not deny that there were discrepancies between the evidence from B and C, they found them to be insignificant and, in so far as B's account differed from the experts' conclusion as to the time of A's death, they noted that one of the experts herself had admitted that human error could not be completely ruled out (see paragraph 19 above). The Court finds the determination of the time of A's death of particular relevance, in that a possible delay between the time A was handed over to B and A's murder casts more doubt on whether there was an intention to kill A as soon as he was handed over to B, the knowledge of which was instrumental for the applicant's conviction.

66. Moreover, the courts noted that the C's reasons for giving evidence for the prosecution had been explained (see paragraph 22 above). Nevertheless, there is no indication that they paid any attention to those reasons or to the nature and scope of the advantages obtained by B and C beyond a general statement that providing advantages in return for incriminating evidence from an accomplice was in accordance with the law.

67. Concerning E, the applicant pointed out that he had been acquitted of D's murder with final effect and that a retrial following his confession had been refused on the grounds of its inconsistency with other evidence. In any event, E's incriminating testimony was full of inconsistencies and could not be dissociated from the fact that he had in fact been provided immunity for four murders (see paragraphs 15 and 25 above).

68. The courts noted the uncontested fact that E's acquittal had been in an evidentiary situation different from the applicant's conviction and held that the refusal of E's retrial was of no consequence. Moreover, they provided a list of explanations for the inconsistencies in his evidence, including its contradiction with expert evidence as regards the side of the body in which the victim had been shot.

69. The Court finds the differing conclusions arrived at by the domestic courts as regards the trustworthiness of the evidence from E in the proceedings concerning the request for a retrial and the applicant's trial worrying, and the courts' reasoning for reaching a different conclusion in the latter to be manifestly insufficient. Along the same lines, the domestic courts' explanations for the inconsistencies in the evidence from E, particularly in relation to expert evidence, give the impression of seeking to justify the acceptance of his version of events rather than submitting it to critical scrutiny.

70. At this juncture, the Court reiterates that it is not its task to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. It should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for example, *Moreira Ferreira*, cited above, § 83 (b), with further references).

71. In the present case, however, the domestic courts approached some of the applicant's objections in a manner manifestly distorting the content of the evidence concerned and relied on reasoning clearly lacking in coherence. This is demonstrated, for example, by the suggestion that the credibility of the evidence from the cooperating witnesses was confirmed rather than undermined by inconsistencies between it and other objective evidence, as well as by the inherent contradiction in justifying the inconsistencies in E's evidence by the stress that D's murder had placed upon him while, at the same time, justifying inconsistencies in the accomplice evidence by the commonplace nature of such offences for him and the other cooperating perpetrators at that time (see paragraphs 21 and 22 above).

72. Unlike in the case of *Xenofontos and Others* (cited above, § 80), self-serving motives on the part of B, C and E have not been ruled out.

73. The courts in fact did not pay any discernible individual attention to the scope and nature of the advantages obtained by any of these witnesses in return for incriminating the applicant, despite his specific arguments on that point and despite his ability to cross-examine these witnesses.

74. Nevertheless, the advantages in question appear rather significant, particularly in the case of C and E, since they were at least temporarily shielded from prosecution for one (C) and four (E) murders. While it is true that B was charged with A's murder, no information was made available to

the Court to show the developments and outcome of the proceedings against him. Even though the prosecution of C and E appears to have eventually been initiated or resumed, and despite their confessions and the time that has passed, there is no indication that they were in fact brought to trial.

75. As to the existence and effectiveness of any safeguards, the Court notes that while the CCP regulates the temporary suspension of the bringing of charges and the stay of criminal prosecution in respect of collaborating perpetrators (see paragraphs 41 and 42 above), there does not appear to be any statutory framework or established practice in relation to matters such as immunity for those perpetrators. Having regard to the pre-trial stage at which such arrangements take place, they do so under the sole responsibility of the prosecuting authorities, with no element of judicial control (see *Adamčo*, cited above, § 70). Although in his appeal, appeal on points of law and constitutional complaint the applicant consistently and in detail questioned the nature and scope of the advantages provided to B, C and E on the facts on his case, his arguments were given no more than an abstract reply.

76. In sum, in view of the importance of the evidence from B, C and E 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 to ensure the overall fairness of the proceedings (ibid., § 71, and contrast *Habran and Dalem*, cited above, § 117).

77. The Court accordingly concludes that the applicant's trial fell short of the guarantees of fairness under Article 6 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage, arguing that he had been convicted arbitrarily, challenging the conditions in which he was serving his sentence and contending that his conviction had ultimately led to an interference with his reputation.

80. The Government considered that claim excessive and pointed out that in the event of a finding of a violation of the applicant's rights, it would be open to him to apply for a retrial.

81. The Court notes that a part of the applicant's claim is based on the premise that his conviction was wrongful. However, the Court cannot speculate as to the outcome of proceedings against him had they been in conformity with the requirements of Article 6 of the Convention. The finding of a violation of that provision in the present case does not therefore imply that the applicant was wrongly convicted. Moreover, the Court finds no causal link between the violation found and the loss allegedly suffered owing to the conditions of the applicant's detention.

82. 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 a retrial 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 a retrial. 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

83. The applicant also claimed EUR 51,221.78 for legal costs, translation costs, expert witness fees and out-of-pocket expenses incurred at domestic level and before the Court.

84. The Government requested that the matter be decided in accordance with the Court's case-law.

85. 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 were 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 15,000, plus any tax that may be chargeable to the applicant, covering costs under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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 15,000 (fifteen 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's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President