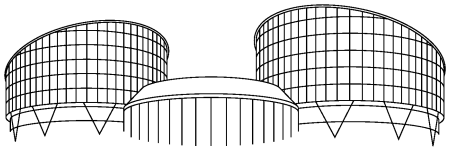

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ASATRYAN v. ARMENIA

(Application no. 3571/09)

JUDGMENT

STRASBOURG

27 April 2017

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 Asatryan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Ledi Bianku,
Robert Spano,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 28 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 3571/09) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Ms Silva Asatryan ("the applicant"), on 15 June 2009.

2. The applicant was born in 1960 and lived in Yerevan prior to her imprisonment. She is represented before the Court by Mr K. Mezhlumyan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been denied a fair trial as a result of admission by the Court of Appeal of pre-trial witness statements that were not read out in court and her inability to examine those witnesses.

4. On 24 May 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The present case concerns the applicant's trial and conviction for attempted murder of M. G., a businessman and former parliamentarian. A co-defendant, Y. W., was tried and convicted for assisting an offender.

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

7. On 29 December 2001 a bomb placed under M.G.'s car detonated when the latter started the engine in the morning. M.G. survived without major injuries.

8. On the same date the District Prosecutor's Office started an investigation into the matter. When questioned by police officers, M.G. pointed to the applicant's ex-husband, A.G., with whom he had major disagreements over business-related issues, as the only possible offender.

9. On the same day A.G. was summoned to the police station. Having acknowledged the existence of disagreements with M.G., he denied the offence and stated that he had been at home with his son, V.G., the night before the incident.

10. On the same day V.G. was arrested on suspicion of attempted murder. The charges against him were eventually dropped several months later since his involvement in the offence had not been established.

11. On 18 February 2002 A. At., A.G.'s friend who also knew the applicant and the family, was interviewed. He stated, *inter alia*, that he was aware of A.G.'s problems with M.G. and that the applicant had always been against A.G. doing business with M.G. since she considered the latter a "scammer".

12. On the same date A.A., A.G.'s neighbour, was interviewed and described his family as a normal and ordinary one. She mentioned that about a year before, the applicant had complained about M.G. because he owed them some money.

13. On 29 January 2002 L.G., the applicant's daughter, was interviewed and stated, *inter alia*, that she had learnt about her parents' divorce three or four years previously. The parents had maintained good relations and the family was in contact almost every day. She also stated that, most of the time, the applicant stayed in the apartment where the father lived.

14. On 21 February 2002 A.B., the applicant's neighbour, was interviewed. He stated that he had known the members of the family, A.G., the applicant and their two children V.G. and L.G., since 2001, when they had settled in the building.

15. On 16 September 2005 Y.W., a friend of the family, was arrested following the discovery of a large quantity of firearms and explosives in his house. Shortly after, Y.W. confessed to M.G.'s attempted murder and stated that he had acted on the applicant's orders.

16. On 23 September 2005 the applicant was arrested and charged with instigation of attempted murder and property damage.

17. On an unspecified date the investigation was concluded and the criminal case was referred to the Avan and Nor-Nork District Court of Yerevan for trial. The bill of indictment included L.G. in the witness call list while it appears that A.At., A.A. and A.B. were not included in it.

18. At the trial, Y.W. retracted his pre-trial statements, claiming that they had been obtained under duress. The applicant denied any involvement in M.G.'s attempted murder, stating that she had divorced A.G. in 1999 and since then she had lived with their daughter L.G. in another apartment while A.G. lived with their son, V.G. She also stated that at some point she had been asked to sign some documents in relation to a contract between A.G. and M.G. since the contract concerned the sale of the house where she used to live, which she did. However, in general she had no connection with A.G. and tried not to maintain any contact with him.

19. At the hearing of 22 June 2006 the applicant's lawyer asked for L.G. to be excluded from the witness call list, since the latter was the applicant's daughter. This request was granted when L.G. expressed her wish to use the testimonial privilege.

20. On 12 October 2007 the District Court found the applicant guilty as charged and sentenced her cumulatively to nine years' imprisonment. Y.W. was also convicted. The District Court found it established that the applicant had ordered M.G.'s murder as the property-related disputes between the latter and A.G. had also affected her property rights. In this connection the District Court mainly relied on the trial statements of S.A., Y.W.'s spouse, and L.C., his former colleague and the fact that the applicant was involved in court disputes with M.G., which showed that both she and A.G. had a strained relationship with the latter.

21. On 29 October 2007 the applicant lodged an appeal against the judgment of the District Court. On 3 December 2007 she lodged a supplement to her appeal claiming, *inter alia*, that she had no reason to murder M.G. as she had been living separately from A.G. since their divorce in 1999 and had no interest in his business activities.

22. In the course of the proceedings before the Criminal Court of Appeal Y.W. retracted his statements made before the District Court and submitted that in reality he had organised the explosion of M.G.'s car upon the applicant's request. However, he had no intention of killing M.G., but was trying to frighten him. The applicant maintained her defence.

23. On 18 June 2008 the Criminal Court of Appeal dismissed the applicant's appeal and upheld the judgment of 12 October 2007 as regards her conviction and sentence, while Y.W.'s sentence was reduced. In its judgment the Court of Appeal, *inter alia*, established that although the applicant had divorced A.G., she had maintained a family-like relationship with him and expressed her annoyance at M.G.'s actions in the presence of

different people. In this respect, the judgment of the Court of Appeal referred to L.G.'s pre-trial statement of 29 January 2002, A.At.'s pre-trial statement of 18 February 2002, as well as the pre-trial statements of two neighbours, A.A. and A.B., made on 18 and 21 February 2002 respectively.

24. On 21 November 2008 the applicant lodged an appeal on points of law claiming, *inter alia*, that the Court of Appeal had based its conclusions on the pre-trial statements of L.G., A.A., A.B. and A.At., which had not been read out and examined either by the Avan and Nor-Nork District Court of Yerevan or the Court of Appeal. Furthermore, she had had no opportunity to question these witnesses.

25. On 15 December 2008 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

26. On 14 April 2009 the applicant lodged an application with the Constitutional Court challenging the compatibility with the Constitution of certain provisions of the Code of Criminal Procedure (hereafter, the CCP) allowing the Court of Cassation not to indicate reasons when declaring inadmissible an appeal on points of law.

27. On 28 July 2009 the Constitutional Court granted the application by finding such provisions of the CCP incompatible with the Constitution.

28. On 11 August 2009 the applicant, based on the above decision of the Constitutional Court, requested the Court of Cassation to reopen the proceedings and to re-examine her appeal on points of law of 21 November 2008.

29. By decision of 25 September 2009 the Court of Cassation reopened the proceedings, re-examined the applicant's appeal on points of law and declared it inadmissible for lack of merit. In doing so, the Court of Cassation, *inter alia*, indicated that the Criminal Court of Appeal's conclusion concerning the applicant's guilt was correct as it was based, among other things, on the witness statements of L.G. and A.A.

II. RELEVANT DOMESTIC LAW

30. Article 20 §§ 1 and 2 of the Code of Criminal Procedure (hereafter CCP) state that no person is under an obligation to testify against himself, his spouse or next of kin. A person who is requested by the investigating authority to provide information or materials incriminating himself, his spouse or next of kin in an offence, has the right to refuse to provide such information or materials.

31. Article 23 § 1 states that criminal proceedings shall be conducted on the basis of the principle of adversarial proceedings.

32. Pursuant to Article 86 § 3 CCP, a witness is obliged to appear upon the summons of the authority dealing with the case in order to give testimony. A witness has the right to refuse to testify and provide materials

and information against himself, his spouse or next of kin (Article 86 § 5 (2) and (3)).

33. Article 105 § 1 (2.1) CCP provides that information obtained in breach of the rights of a witness guaranteed under Article 86 § 5 of the same Code, cannot be used to substantiate the charges and used as evidence in criminal proceedings.

34. Article 332 § 1 CCP states that if a person summoned to court has failed to appear before the court, having heard the opinions of the parties, it shall decide to continue the trial or adjourn the proceedings. The proceedings may be continued if the failure to appear of any such persons shall not obstruct the thorough, complete and objective examination of the circumstances of the case.

35. Pursuant to Article 339 § 1 (1) CCP, before proceeding to the hearing of a witness, the presiding judge informs that witness of his right to refuse to testify against himself, his spouse or next of kin.

36. According to Article 342 § 1 CCP, the reading out at the trial of witness statements made during the inquiry, the investigation or a previous court hearing is permissible if the witness is absent from the court hearing for reasons which rule out the possibility of his appearance in court.

37. According to Article 358 § 1 CCP, a court judgment must be based on the law and substantiated. Paragraph 3 further establishes that a judgment is substantiated if its conclusions are based on the evidence examined during the court proceedings.

38. According to Article 393 § 2 CCP, the appellate court renders a judicial decision in compliance with the general rules set out by the CCP, taking into account the requirements of the same provision. When rendering a judicial decision, the appellate court may rely on the statements of persons who were not summoned to the hearing before the appellate court but were heard by the first instance court.

39. Article 426.1 § 1 CCP states that only final acts are subject to review on the ground of newly discovered or new circumstances. On the ground of newly discovered or new circumstances a judicial act of the court of first instance is reviewed by the appeal court, while judicial acts of the appeal court and the Court of Cassation are reviewed by the Court of Cassation (Article 426.1 § 2).

40. According to Article 426.4 § 1 (2) CCP judicial acts may be reviewed on the ground of new circumstances if a violation of a right guaranteed by an international convention to which Armenia is a party has been found by a final judgment or decision of an international court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3(d) OF THE CONVENTION

41. The applicant complained that she did not have a fair hearing in the proceedings before the Criminal Court of Appeal, as the court relied in its judgment on pre-trial witness statements which were not read out and examined in court. She further complained that she had no opportunity to examine those witnesses at any time during the proceedings. She alleged a breach of Article 6 §§ 1 and 3(d) of the Convention, which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

42. The Government contested that argument.

A. Admissibility

43. The Government claimed that the applicant failed to exhaust the domestic remedies in respect of this complaint. They submitted that she had been provided with all the materials of the case file, including the pre-trial witness statements at issue, before the trial. However, she had not asked to examine the witnesses in question either before or during the trial.

44. The applicant submitted that she had not found it necessary to request the courts to call those witnesses since it was the court's duty to summon them if their pre-trial statements were later to be used in evidence against her.

45. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70 and 71, 25 March 2014; *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports of Judgments and Decisions* 1998-VIII).

46. The Court observes that the witness statements in question were used in evidence against the applicant in the judgment of the Court of Appeal of 18 June 2008 (see paragraph 23). The Court further observes that the applicant then complained of her inability to examine the witnesses in question in her appeal on points of law of 21 November 2008 (see paragraph 24 above), thus availing herself of the earliest and the only opportunity of raising the substance of her complaints under Article 6 of the Convention before the domestic authorities.

47. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies and that the Government's objection is therefore dismissed.

48. The Court further notes that the complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

49. The applicant submitted that there had been a violation of Article 6 of the Convention as the Court of Appeal had relied on the pre-trial statements of witnesses L.G., A.A., A.B. and A.At. in its judgment. This evidence, although used by the Court of Appeal to substantiate the finding of her guilt, had not been read out and examined in court and, moreover, she had no opportunity to question these witnesses. The applicant conceded that witness A.A. had testified before the District Court. She observed, however, that in its judgment the Court of Appeal had referred to A.A.'s pre-trial statement made on 18 February 2002 and not her testimony made at the trial.

50. The Government submitted that although the Court of Appeal had referred in its judgment to the pre-trial statements in question, the court's conclusions were based on other evidence. Those statements did not have any significant value for the establishment of the applicant's guilt but rather contributed to the establishment of some facts of the case. The Government pointed out that witness A.A. had in fact been examined during the proceedings before the District Court while L.G., being the applicant's daughter, was not examined by the same court, as the applicant requested. As for the pre-trial statements of witnesses A.B. and A.At., these had no connection with the establishment of the applicant's guilt. In fact, the applicant's conviction was based on the massive body of other evidence, such as Y.W.'s statements made during the investigation and before the Court of Appeal, the statements of witnesses L.C. and S.A. and the applicant's involvement in court disputes with M.G.

2. The Court's assessment

(a) General principles

51. The Court reiterates that the key principle governing the application of Article 6 is fairness. The right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting the guarantees of Article 6 § 1 of the Convention restrictively (see *Moreira de Azevedo v. Portugal*, 23 October 1990, § 66, Series A no. 189; *Gregačević v. Croatia*, no. 58331/09, § 49, 10 July 2012).

52. The concept of a fair hearing implies, *inter alia*, the right to an adversarial trial which means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (see *Brandstetter v. Austria*, 28 August 1991, § 67, Series A no. 211). In this respect, the Court notes that it is possible that a procedural situation which does not place a party at any disadvantage vis-à-vis his or her opponent still represents a violation of the right to adversarial proceedings if the party concerned did not have an opportunity to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, §§ 38-46, 3 March 2000 and *Gregačević*, cited above, § 50).

53. The Court further reiterates that as a general rule, Article 6 §§ 1 and 3 (d) require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011; *Poletan and Azirovik v. the former Yugoslav Republic of Macedonia*, no. 26711/07, 32786/10 and 34278/10, § 81, 12 May 2016). The use in evidence of statements obtained at the police inquiry and judicial investigation stages is not in itself inconsistent with the provisions cited above, provided that the rights of the defence have been respected (see *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C).

54. In *Al-Khawaja and Tahery* (cited above, §§ 119-147), the Grand Chamber clarified the principles to be applied when a witness does not attend a public trial. Those principles may be summarised as follows:

(i) the Court should first examine the preliminary question of whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance;

(ii) typical reasons for non-attendance are, as in the case of *Al-Khawaja and Tahery* (cited above), the death of the witness or the fear of retaliation. There are, however, other legitimate reasons why a witness may not attend a trial;

(iii) when a witness has not been examined at any prior stage of the proceedings, allowing the admission of a witness statement in lieu of live evidence at trial must be a measure of last resort;

(iv) the admission as evidence of the statements of absent witnesses results in a potential disadvantage for the defendant, who, in principle, in a criminal trial should have an effective opportunity to challenge the evidence against him. In particular, he should be able to test the truthfulness and reliability of the evidence given by the witnesses, by having them orally examined in his presence, either at the time the witness was making the statement or at some later stage of the proceedings;

(v) according to the "sole or decisive rule", if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom the accused is unable to question at any stage of the proceedings, his defence rights are unduly restricted;

(vi) in this context, the word "decisive" should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case. Where the untested evidence of a witness is supported by other corroborative evidence, the assessment of whether it is decisive will depend on the strength of the supportive evidence: the stronger the other incriminating evidence, the less likely that the evidence of the absent witness will be treated as decisive;

(vii) however, as Article 6 § 3 of the Convention should be interpreted in the context of an overall examination of the fairness of the proceedings, the sole or decisive rule should not be applied in an inflexible manner;

(viii) in particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. At the same time, where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. Because of the dangers of the admission of such evidence, it would constitute a very important factor to balance in the scales and one which would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance to the case.

55. Those principles have been further clarified in the case of *Schatschaschwili* (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 111 – 131, ECHR 2015) in which the Grand Chamber confirmed that the absence of good reason for the non-attendance of a witness could not, of itself, be conclusive of the lack of fairness of a trial, although it remained a very important factor to be weighed in the balance when assessing the overall fairness, and one which might tip the balance in favour of finding a

breach of Article 6 §§ 1 and 3(d). Furthermore, given that its concern was to ascertain whether the proceedings as a whole were fair, the Court should not only review the existence of sufficient counterbalancing factors in cases where the evidence of the absent witness was the sole or the decisive basis for the applicant's conviction, but also in cases where it found it unclear whether the evidence in question was sole or decisive but nevertheless was satisfied that it carried significant weight and its admission might have handicapped the defence. The extent of the counterbalancing factors necessary in order for a trial to be considered fair would depend on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair (see *Seton v. the United Kingdom*, no. 55287/10, §§ 58 and 59, 31 March 2016).

56. Since the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will in this case examine the complaints under Article 6 § 1 and 3 (d) taken together (see, *mutatis mutandis*, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, *Reports of Judgments and Decisions* 1997-III and *Gregačević*, cited above, § 52).

(b) Application of these principles to the present case

57. The Court observes that the District Court found the applicant guilty of the attempted murder of M.G. In doing so, the court established that she had a motive to kill him, since she had her own property interests in the business-related disputes between M.G. and her ex-husband, A.G. The applicant's defence that she had no connection to A.G. since their divorce in 1999 was rebutted by the fact that she was involved in property disputes with M.G. together with her ex-husband (see paragraph 20 above). The Court further observes that in addition to evidence referred to in the District Court's judgment, the Court of Appeal relied on the pre-trial statements of witnesses A.At., L.G., A.A. and A.B. (see paragraphs 11, 12, 19 and 14 above) to conclude that the applicant's defence advanced at the trial and in her appeal was not credible (see paragraphs 21 and 23 above).

58. The applicant's complaints stem from the following two facts. Firstly, she claims that the Court of Appeal did not read out and examine the pre-trial statements of the witnesses in question during the proceedings before it, nor had the trial court examined them. Secondly, she complains of the fact that she had no opportunity to examine those witnesses but their pre-trial statements were later used in evidence against her by the Court of Appeal.

59. As regards the applicant's first argument, the Court notes that no evidence was produced by the Government to substantiate that the pre-trial statements in question were in fact read out and examined either by the District Court or the Court of Appeal. Rather, the Government argued that

the evidence in question was not decisive in securing the applicant's conviction (see paragraph 50 above).

60. The Court observes in this respect that the District Court's judgment, which was later fully upheld by the Court of Appeal in so far as the applicant's conviction was concerned, indeed referred to other evidence directly incriminating the applicant. However, in view of the fact that the Court of Appeal found it necessary to rely additionally on the pre-trial statements of witnesses L.G., A.A., A.B. and A.At. to reinforce the District Court's finding that the applicant, contrary to her defence, had a motive for killing M.G., the Court finds that these statements were of relevance for the case. In respect of such evidence, the Court of Appeal was obliged to secure the accused an opportunity to organise her defence in an appropriate way and to put all her relevant arguments.

61. Furthermore, as the Court has held on many occasions, one of the requirements of a fair trial is the possibility for the accused to confront the witnesses in the presence of a judge who must ultimately decide the case, because the judge's observations on the demeanour and credibility of a certain witness may have consequences for the accused (see *Hanu v. Romania*, no. 10890/04, § 40, 4 June 2013 with further references). It is true that the Court of Appeal did not reach a new conclusion on the applicant's guilt. However, having full jurisdiction to review the District Court's judgment as to the facts and the law, the Court of Appeal not only based its conclusions on witness evidence which had not been tested in the appellate proceedings but also the witnesses in question had never been examined by the District Court (see, *a contrario*, *Kashlev v. Estonia*, no. 22574/08, § 47, 26 April 2016). Nor did the District Court refer to that evidence when convicting the applicant. In these circumstances, the omission of the Court of Appeal to hear in person the witnesses whose statements were later to be used against the applicant was capable of substantially affecting her defence rights.

62. At the same time, the Court observes that witness L.G., being the applicant's daughter, had the right to testimonial privilege under the domestic law and moreover made use of it (see paragraphs 19, 30, 32 and 35 above). Therefore, for the purposes of the analysis under Article 6 § 3 (d) of the Convention, in a situation where L.G. had exercised her legal right not to testify against her next of kin, the applicant, she had a position different from the other three witnesses who were absent from the applicant's trial. However, despite the fact that L.G. had invoked her statutory testimonial privilege, the Court of Appeal nevertheless relied on her pre-trial statements made at the stage when the applicant did not have the status of the accused in the proceedings (see paragraphs 10, 13 and 16 above).

63. As regards witnesses A.A., A.B. and A.At., the Court observes that these witnesses were not examined by the Court of Appeal. Neither were they examined by the first instance court nor were they included in the

witness call list (see paragraph 17 above). The Court of Appeal nevertheless relied on their statements made at the stage of the proceedings when the applicant did not face any charges as a result of which she was deprived of the opportunity to contest them, whereas under the domestic criminal procedure the Court of Appeal could not rely on the statements of witnesses who were absent from the appellate proceedings and had not been examined by the first instance court (see paragraph 38 above).

64. The Court finds it unclear whether the evidence of witnesses A.A., A.B. and A.At. was sole or decisive but it is nevertheless satisfied that it carried significant weight and its admission might have handicapped the defence (see paragraph 55 above with references to the Court's case-law on the subject). The Court notes that there were no procedural safeguards to compensate for the handicaps caused to the defence. In particular, the applicant never had the possibility of challenging the witnesses in question during the investigation nor could she reasonable have been expected to make such requests during the trial given that these witnesses were not included in the witness call list. Furthermore, in the circumstances where the evidence in question was not examined in a public hearing the defence was not even aware that the Court of Appeal intended to refer to that evidence to uphold the applicant's conviction (see *Al-Khawaja and Tahery*, cited above, §§ 119-147).

65. The foregoing considerations are sufficient to enable the Court to conclude that in the instant case the applicant's right to a fair trial was breached.

66. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. The applicant also raised other complaints under Articles 6 and 7 of the Convention.

68. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 46,200 euros (EUR) as lost profit and EUR 100,000 in respect of non-pecuniary damage.

71. The Government considered that there was no causal link between the pecuniary and non-pecuniary damage suffered by the applicant and the alleged violation of Article 6 of the Convention.

72. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

73. The Court considers it also necessary to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, if any, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII; and *Lungoci v. Romania*, no. 62710/00, § 55, 26 January 2006). In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see, *mutatis mutandis*, *Sejdovic v. Italy* [GC], no. 56581/00, § 127, ECHR 2006-II; and *Yanakiev v. Bulgaria*, no. 40476/98, § 89, 10 August 2006).

74. The Court notes in this connection that Articles 426.1 and 426.4 of the Code of Criminal Procedure allow the reopening of the domestic proceedings if the Court has found a violation of the Convention or its Protocols (see paragraphs 39 and 40 above). As the Court has already held on previous occasions, in cases such as the present one, the most appropriate form of redress would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Gabrielyan v. Armenia*, no. 8088/05, § 104, 10 April 2012; and *Avetisyan v. Armenia*, no. 13479/11, § 75, 10 November 2016).

B. Costs and expenses

75. The applicant also claimed EUR 15,700 for costs and expenses, including EUR 9,000 for legal fees incurred during the domestic proceedings, as well as EUR 6,000 for legal fees and EUR 700 for postal and translation costs (EUR 500 and 200 respectively) incurred before the Court. As regards the legal costs claimed in respect of the proceedings before the Court, the applicant submitted an agreement with her representative, Mr Mezhlumyan, according to which she was bound to pay him AMD 3,000,000 (approximately EUR 5,700 at the material time) if the Court found in her favour.

76. The Government submitted that the applicant had failed to substantiate with documentary proof that she had actually incurred the legal costs claimed. She had also failed to provide any evidence in respect of the allegedly incurred postal expenses.

77. 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. In this respect, the Court notes that the applicant failed to submit any documentary proof substantiating her claims for legal costs incurred before the domestic courts. The Court, therefore, dismisses the applicant's claims in this respect.

78. As regards the applicant's claim for legal costs incurred before the Court, the Court notes that the applicant concluded an agreement with her representative concerning his fees which is comparable to a contingency fee agreement, an agreement whereby a lawyer's client agrees to pay the lawyer, in fees, a certain percentage of the sum, if any, awarded to the litigant by the court. Such agreements may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI; and *Kamasinski v. Austria*, 19 December 1989, § 115, Series A no. 168).

79. The Court notes that the applicant agreed to pay AMD 3,000,000 to her representative in the event the Court found in her favour. The Court further notes that contingency agreements are enforceable under Armenian law. In particular, the Advocacy Act does not set out any limitations on the type of agreement an advocate may enter into with his client, such agreements being regulated by the general provisions of the Civil Code. The Court, therefore, recognises the lawfulness of the arrangement entered into between the applicant and her representative, Mr Mezhlumyan (see *Saghatelyan v. Armenia*, no. 7984/06, § 62, 20 October 2015; *Safaryan v. Armenia*, no. 576/06, § 63, 21 January 2016).

80. As regards the rest of the applicant's claims under this head, the Court observes that the submitted documentary evidence only substantiates the payment of translation fees in the amount of EUR 200.

81. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,700 for legal and translation costs incurred before the Court.

C. Default interest

82. 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 complaints concerning the alleged breach of the applicant's right to adversarial proceedings and the inability to question witnesses against her admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) 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, to be converted into Armenian drams at the rate applicable at the date of settlement:
      (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,700 (one thousand seven hundred 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 27 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Linos-Alexandre Sicilianos
Deputy Registrar	President