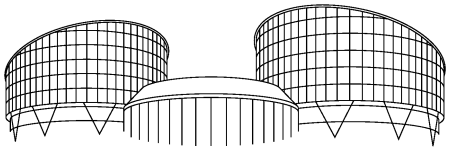

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MANUCHARYAN v. ARMENIA

(Application no. 35688/11)

JUDGMENT

STRASBOURG

24 November 2016

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 Manucharyan v. Armenia,

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

Mirjana Lazarova Trajkovska, *President,*
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan,
Tim Eicke, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 3 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 35688/11) 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, Mr Spartak Manucharyan ("the applicant"), on 31 May 2011.

2. The applicant was represented by Ms T. Matinyan, a lawyer practising in Vanadzor. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been denied a fair trial as his conviction had been based on untested witness evidence.

4. On 11 July 2013 the complaint concerning the applicant's inability to obtain the attendance and examination of a witness against him was communicated 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 1976 and is currently detained at Nubarashen Prison.

6. On 1 July 2009 criminal proceedings were instituted on account of the murder of K.S. who had been shot dead at 1.30 a.m. that day in the town of Alaverdi.

7. The applicant presented himself to the police later that day, surrendered a gun and confessed to the murder.

8. The applicant was charged the same day with murder and illegal possession of firearms.

9. On the same date the police interviewed K.M., who was K.S.'s girlfriend and had been present at the scene of the murder. She stated that it had been the applicant, her neighbour, who, after yelling and swearing, had started to shoot at K.S.'s car moments after she had got out of it.

10. On 3 July 2009 the applicant was questioned. He denied the charges and refused to testify.

11. When interviewed, S.S., K.S.'s sister, stated that she had been aware of some problems between her brother and a friend of the applicant. According to her statement, the applicant had once called to find out K.S.'s whereabouts. She had then informed K.S. about this and he had become anxious.

12. K.M.'s parents, S.M. and A.M., stated during their interviews that on the day of the murder they had heard gunshots and that shortly after K.M. had run into their house in tears, saying that the applicant had killed K.S. right in front of her.

13. On 14 January 2010 the applicant's brother, V.M., was killed.

14. At an additional questioning on 9 March 2010, the applicant stated that he had confessed to the murder to cover up for his brother, who had a newborn baby and took care of their parents. The applicant stated that there was no longer any need to cover up for V.M. because he was dead. The applicant's alibi was that on the day of the murder he had visited his father's friend V.J. at around 10.30 p.m. and had stayed in his house until around 2.30 a.m.

15. On 12 March 2010 V.J. was interviewed and denied that the applicant had been in his house until that late. He stated, in particular, that the applicant had indeed come to his house at around 10 p.m. but had only stayed for about an hour or an hour and a half. At around 11.30 p.m. V.M. had come and told the applicant that they needed to go and see someone and they had left.

16. At a formal confrontation between the applicant and V.J. the latter reiterated his previous statement that the applicant had come to his house at around 10 p.m. and had stayed there for no more than two hours. The applicant did not make any statement.

17. On 27 April 2010 the bill of indictment was finalised and the case was referred to the Lori Regional Court for trial. The prosecution relied on the following evidence: statements from S.S., K.M., S.M., A.M. and V.J., the record of the formal confrontation between the applicant and V.J., the

results of forensic examinations, including a biochemical examination which had shown the presence of gunshot residue on the clothes worn by the applicant on the day of the murder, and the records of various investigative actions.

18. By a decision of 13 May 2010 the Regional Court scheduled the first hearing in the applicant's case to take place on 21 May 2010.

19. By a letter of 14 May 2010 the Regional Court summoned K.M. to appear at the hearing of 21 May 2010. The summons was returned to the Regional Court.

20. The Regional Court summoned K.M., S.M. and V.J. to a rescheduled hearing on 17 June 2010.

21. On 17 June 2010 the Regional Court held a hearing at which the duly summoned K.M., S.M. and V.J. failed to appear. The Regional Court made a decision to compel the witnesses to attend a rescheduled hearing on 29 June 2010. The enforcement of the decision was assigned to the police.

22. On 29 June 2010 the police sent a letter to the Regional Court informing it that, *inter alia*, K.M. was absent from her place of residence.

23. On the same date the Regional Court held a hearing and, stating that its decision to compel the witnesses, including K.M., had remained unenforced, it decided to order them to appear at the next hearing, to be held on 22 July 2010.

24. The Regional Court thereafter held at least three more hearings - on 7 September, and 21 and 22 October 2010, each time making decisions to order the absent witnesses, including K.M., to attend. According to certificates delivered by the police on 20 and 25 October 2010, K.M. was absent from her place of residence when the police visited. The certificate of 20 October 2010 stated that S.M. told the police that her daughter was abroad.

25. The Regional Court eventually examined the applicant's case in K.M.'s absence.

26. On 4 November 2010 the Regional Court found the applicant guilty as charged and sentenced him to thirteen years' imprisonment. In doing so, it stated, in particular, the following:

> "Examination and evaluation of the evidence:
>
> On 1 July 2009 ... [the applicant] made a confession ... and, having surrendered a gun, stated that he had shot at [K.S.'s] car that night ...
>
> In the course of the investigation [the applicant] did not accept the charges against him stating that his deceased brother [V.M.] had killed [K.S.]; he had been in ... [V.J.'s] house ...
>
> At the trial [the applicant] pleaded not guilty ...
>
> The crime committed by [the applicant] is proven by the following evidence collected in the case:
>
> The statement of the victim's legal heir, the witness S.S. ...

... the pre-trial statement of the witness K.M. ...

... the pre-trial statements of the witnesses S.M. and A.M. ...

... the pre-trial statement of the witness V.J. by which he entirely denied [the applicant's] statement that at the time of the murder [the applicant] had been in his house.

[V.J.] maintained his statement during the confrontation with [the applicant] ...

... the record of the examination of the scene of the incident ...

... the record of the examination of the body ...

... the record of the examination of the ... car ...

... the record of the seizure of [the applicant's] clothes ...

... the record of the photo line-up ... according to which K.M. had identified [the applicant] ...

... the record of ... the confession and surrender of the gun ...

The conclusion of the forensic medical examination [concerning K.S.'s injuries] ...

[Other forensic evidence]

The conclusion of the biochemical forensic examination ... that gunshot residue was discovered on [the applicant's] clothes worn on the day of the incident.

[Material evidence] "

27. The applicant lodged an appeal, complaining, *inter alia*, that K.M., the sole eyewitness to the incident and whose pre-trial statement had been the only evidence directly incriminating him in the offence, had not been examined in court.

28. On 20 December 2010 the Criminal Court of Appeal took over the case and scheduled the first hearing in the case for 11 January 2011.

29. On 11 January 2011 the applicant's lawyer applied to the Court of Appeal, seeking, *inter alia*, to have K.M summoned. The Court of Appeal granted the application as far as the question of K.M.'s presence was concerned and summoned her to appear at the next hearing.

30. K.M. did not appear before the Court of Appeal. The applicant stated that he then applied to have K.M.'s statements declared inadmissible. According to the applicant, the Court of Appeal decided to address the application during deliberations but then failed to do so.

31. On 26 January 2011 the Court of Appeal upheld the applicant's conviction, relying on the same body of evidence as the Regional Court. The judgment did not address the issue of K.M.'s non-attendance.

32. On 22 February 2011 the applicant lodged an appeal on points of law, complaining, *inter alia*, about the lack of an examination of the witnesses against him, both in the Regional Court and the Court of Appeal.

33. On 12 April 2011 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

II. RELEVANT DOMESTIC LAW

34. According to Article 86 (§§ 3 and 4) of the Code of Criminal Procedure (hereafter "the CCP"), a witness is obliged to appear when summoned by an authority dealing with a case. The failure of a witness to comply with his obligations results in the imposition of sanctions prescribed by law.

35. Article 153 § 2 of the CCP provides that a witness may be compelled to appear by a reasoned decision of the court and must inform the summoning authority of any valid reasons for not appearing within a set time-limit.

36. According to Article 332 § 1 of the CCP, if a summoned witness fails to appear, the court, after hearing the opinions of the parties, decides whether to continue or adjourn the trial proceedings. The proceedings may be continued if the failure of any such person to appear does not impede the thorough, complete and objective examination of the circumstances of the case.

37. Article 342 § 1 of the CCP states that the reading out at the trial of witness statements made during initial enquiries, the investigation or at a previous court hearing is permissible if the witness is absent from the court hearing for reasons which rule out the possibility of his appearing in court, if there is a substantial contradiction between those statements and the statements made by the witness in court, and in other cases prescribed by the Code.

38. Article 426.1 § 1 states that only final acts are subject to review on the grounds of newly discovered or new circumstances. A judicial act of a court of first instance is reviewed on those grounds by the appeal court while the judicial acts of an appeal court and the Court of Cassation are reviewed by the Court of Cassation (Article 426.1 § 2).

39. Article 426.4, which refers to re-opening of judicial proceedings, reads, in so far as relevant, as follows:

> "1. Judicial decisions shall be reviewed on the basis of new circumstances in the following cases:
>
> ...
>
> 2) where a violation of a person's right guaranteed by an international agreement to which the Republic of Armenia is a party has been established by a final judgment or decision of an international court of which the Republic of Armenia is a member.
>
> ...
>
> 3. An application seeking review of a judicial decision based on new circumstances may be lodged within a period of three months from the date on which the applicant learnt or ought to have learnt about their existence.
>
> 4. The running of the three-month time-limit for the purposes of the second point of the first paragraph of this provision starts from the date on which the [relevant]

international court ... has delivered, in accordance with its rules of procedure, its final judgment or decision [in the applicant's case]."

THE LAW

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

40. The applicant complained that he had been deprived of the opportunity to examine the witness K.M. at any time during the criminal proceedings against him, in breach of his right to a fair trial as provided in 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."

41. The Government contested that argument.

A. Admissibility

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant submitted that his conviction had been based to a decisive extent on the pre-trial statement of K.M., the only eyewitness to the murder, whom he had had no opportunity to examine at any stage of the proceedings. The investigative authority had not sought to hold a formal confrontation between him and K.M. while the courts had not made any serious attempt to secure the latter's attendance at the trial. At no time during the proceedings had the applicant been able to challenge K.M.'s statement, which had been the only directly incriminating evidence against him.

44. The Government maintained that despite all their efforts the authorities had been unable to secure K.M.'s presence at the applicant's trial. The trial court had relied on K.M.'s pre-trial statement because it had been corroborated by other evidence, which the applicant had been able to challenge. The applicant, who had been represented throughout the proceedings, had had ample opportunity to present his own evidence and challenge the statements of the other witnesses.

2. The Court's assessment

(a) General principles

45. The Court reiterates that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that provision (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011). It will therefore consider the applicant's complaint under both provisions taken together (see *Windisch v. Austria*, 27 September 1990, § 23, Series A no. 186).

46. The Court further reiterates that all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to that principle, but they must not infringe the rights of the defence. 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 *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 707, 25 July 2013).

47. 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.

48. 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 reasons 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 had not only to 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 depends 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, § 59, 31 March 2016).

(b) Application of those principles to the present case

(i) Whether there was good reason for the non-attendance of the witnesses at trial

49. The Court notes that the Regional Court and the Court of Appeal examined the applicant's case in the absence of the witness K.M., who was the only eyewitness to the murder and had made a statement directly incriminating the applicant when interviewed by the police on the same day (see paragraph 9 above). The Regional Court rescheduled several hearings in an attempt to secure K.M.'s presence at the applicant's trial, and also sought police assistance to that end (see paragraphs 20, 21, 23 and 24 above). The Court of Appeal also, in its turn, attempted to secure K.M.'s presence at the proceedings before it (see paragraph 29 above). The Court further notes that the police repeatedly failed to enforce the Regional Court's orders to compel K.M. to attend the trial, but she, according to the police, could not be located and was believed to have left the country (see paragraphs 22 and 24 above).

50. The Court reiterates in that connection that it has generally adopted a robust approach in determining whether a domestic court had good factual or legal grounds for failing to secure a witness's attendance at trial. It has held that the absence of a witness from the country where the proceedings were being conducted was not in itself sufficient reason to justify his or her absence at trial (see *Seton*, cited above, § 61). Notably, where a witness cannot be located, the Court has held that the authorities must "actively search for the witness" and do "everything which was reasonable to secure the presence of the witness" (see *Lučić v. Croatia*, no. 5699/11, § 79, 27 February 2014).

51. In the present case the Court is not persuaded that all reasonable efforts can be said to have been made to secure the attendance of the witness K.M. at the applicant's trial. It is true that the Regional Court, as mentioned above, did attempt to secure K.M.'s presence in the proceedings before it by rescheduling the hearings several times and seeking police assistance to compel her to attend. However, those measures proved to be futile in view of the constant failure by the police to execute the court's orders. In a situation where the police merely paid several visits to K.M.'s home and, on being informed that she was abroad, neither checked the veracity of that

information nor attempted to locate her to enable the court to possibly seek international legal assistance, the Court cannot consider that the authorities "actively searched for the witness" or did "everything which was reasonable to secure the presence of the witness".

52. However, the lack of a good reason for K.M.'s non-attendance at the applicant's trial is not the end of the matter. That is a consideration which is not of itself conclusive of the lack of fairness of a criminal trial, although it constitutes a very important factor to be weighed in the overall balance, together with other, relevant considerations (see *Schatschaschwili*, cited above, § 113).

(ii) Whether the evidence of the absent witness was "sole or decisive"

53. The Court must further examine whether the evidence of the absent witness K.M. was the sole or decisive basis for the applicant's conviction.

54. The Court reiterates that "sole" evidence is to be understood as the only evidence against the accused (see *Al-Khawaja and Tahery*, cited above, § 131). "Decisive" evidence should be narrowly interpreted as indicating evidence of such significance or importance as 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 supporting evidence: the stronger the corroborative evidence, the less likely that the evidence of the absent witness will be treated as decisive (ibid., § 131).

55. The Court observes that the judgments of the Regional Court and the Court of Appeal admitted K.M.'s pre-trial statement as evidence substantiating the applicant's guilt, without making any evaluation of the probative value of that evidence. The Court must therefore make its own assessment of the weight of the evidence given by the absent witness, having regard to the other incriminating evidence available (see *Schatschaschwili*, cited above, § 143; and *Poletan and Azirovik v. the former Yugoslav Republic of Macedonia*, no. 26711/07, 32786/10 and 34278/10, § 88, 12 May 2016).

56. As already noted, K.M. was the only eyewitness to the offence. She knew the applicant, who was her neighbour, and had pointed him out when interviewed by the police (see paragraph 9 above). It is not in doubt that K.M.'s statement was not the only item of evidence on which the applicant's conviction was based. However, her pre-trial statement was the only piece of direct evidence substantiating the allegation that it had been the applicant who had opened fire at K.S.'s car. In that sense K.M. can be considered to have been the key prosecution witness in the applicant's case. As for the rest of the evidence, S.S.'s statement merely proved that K.S. and the applicant had had strained relations while the statements of K.M.'s parents, A.M. and S.M., were based on her account of the events (see paragraphs 12 and 11 above). It is true that V.J.'s statement, confirmed by

him during the formal confrontation, contradicted the applicant's defence statement that he had been in V.J.'s house when the offence had taken place (see paragraph 15 above). However, V.J.'s evidence taken alone did not prove that it had been the applicant rather than his brother who had shot at the car, as the applicant stated after he withdrew his confession. The Government was unable to demonstrate that the remaining evidence, including the forensic evidence, was enough to show conclusively that the applicant rather than somebody else, such as his brother, had committed the offence. For instance, it does not arise from the decisions taken by the domestic courts that the forensic evidence of gunshot residue on the clothes the applicant wore on the day of the incident proved that he had been the author of the shots. In view of the foregoing, the Court considers that the evidence of the absent witness K.M. was decisive for the applicant's conviction.

(iii) Whether there were sufficient "counterbalancing factors"

57. Lastly, the Court must determine whether there were sufficient counterbalancing factors in place, including measures that permitted a fair and proper assessment of the reliability of the evidence of the absent witnesses to take place. The following elements are relevant in this context: the trial court's approach to the untested evidence, the availability and strength of further incriminating evidence, and the procedural measures taken to compensate for the lack of opportunity to cross-examine directly the witnesses at the trial (see *Schatschaschwili*, cited above, §§ 125-131).

58. The Court notes that the Regional Court's judgment does not contain any analysis of the evidence put before it, much less any indication that it was aware of the reduced evidentiary value of the untested witness statements, including that of K.M. All the evidence was simply listed as proof that the applicant had committed the offence, without any assessment of the credibility of the untested witness evidence (see paragraph 26 above). The Court therefore finds that the trial court failed to examine the reliability of K.M.'s statement in a careful manner.

59. The Court further notes that, as mentioned above, the Regional Court did have additional incriminating evidence against the applicant (see paragraph 56 above). However, as already noted, the additional evidence, as opposed to K.M.'s statement, did not by itself undermine the applicant's defence that it had been his deceased brother who had committed the murder.

60. Lastly, the Court notes that no procedural measures were taken to compensate for the applicant's lack of opportunity to cross-examine K.M. at his trial. The applicant had no opportunity to examine her at any stage of the proceedings. Furthermore, the applicant requested the Court of Appeal to declare K.M.'s evidence inadmissible but his request was not addressed in any manner (see paragraphs 30 and 31 above).

61. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was unreasonably restricted in his right to examine the witness K.M. whose testimony played a decisive role in securing his conviction.

62. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage, including lost profit and expenses borne by his family to visit him in prison. He further claimed EUR 15,000 in respect of non-pecuniary damage.

65. 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.

66. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and it therefore rejects this claim. Making its assessment on an equitable basis, and having regard to the circumstances of the case, the Court awards the applicant EUR 2,400 in respect of non-pecuniary damage.

67. In addition, the Court considers it 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 that 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).

68. 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 38 and 39 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).

B. Costs and expenses

69. The applicant also claimed EUR 2,000 for legal costs incurred before the Court.

70. The Government asked that the claim under this head be rejected.

71. 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. The Court notes that the applicant failed to submit any documentary proof to substantiate his claims for costs and expenses. The Court therefore rejects the claims under this head.

C. Default interest

72. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 24 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President