



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

FOURTH SECTION

**CASE OF SARKIZOV AND OTHERS v. BULGARIA**

*(Applications nos. 37981/06, 38022/06, 39122/06, and 44278/06)*

JUDGMENT

STRASBOURG

17 April 2012

**FINAL**

**24/09/2012**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Sarkizov and Others v. Bulgaria,**

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

Lech Garlicki, *President*,  
David Thór Björgvinsson,  
Päivi Hirvelä,  
George Nicolaou,  
Ledi Bianku,  
Zdravka Kalaydjieva,  
Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 March 2012,

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

**PROCEDURE**

1. The case originated in four applications (nos. 37981/06, 38022/06, 39122/06, and 44278/06) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Bulgarian nationals, Mr Dimitar Alexandrov Sarkizov, Mr Vasil Petrov Vasilev, Mr Dimitar Petkov Petkov, and Mr Kiril Dimitrov Marinkov (“the applicants”), on 5 September 2006, 31 August 2006, 18 September 2006, and 12 September 2006, respectively.

2. The applicants were represented by Mr V. Stoyanov, a lawyer practising in Pazardzhik. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicants alleged, in particular, that their conviction had been based to a decisive extent on anonymous witness testimony, and that their defence rights had been unacceptably restricted, in breach of Article 6 §§1 and 3 (d) of the Convention. The second and the fourth applicants alleged furthermore that the travel bans imposed on them following their release from prison had been unjustified and that they had not had effective domestic remedies in this respect, in breach of Articles 8 and 13 of the Convention and Article 2 §§ 2 and 3 of Protocol No. 4 to the Convention.

4. By a decision of 1 June 2010 the Court decided to join the applications, communicated the above-mentioned complaints to the Government and declared the remainder of the applications inadmissible. Under the provisions of Article 29 § 1 of the Convention, it decided to rule on the admissibility and merits of the communicated complaints at the same

time. The case was later transferred to the Fourth Section of the Court, following the re-composition of the Court's sections on 1 February 2011.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1973, 1974, 1978 and 1967 respectively. The first, the second and the third applicants live in Pazardzhik. The fourth applicant lives in Lozen.

#### **A. The criminal proceedings against the applicants**

##### *1. The preliminary investigation*

6. On 12 October 2004 a preliminary investigation was opened against the applicants in respect of sexual procurement.

7. From 13 to 18 October 2004 the witnesses Mr Zh.M., Mr N.P., Ms R.M. and Ms D.M. were questioned before a judge. Neither the applicants nor their lawyers participated in the questioning.

8. Mr Zh.M. stated that the fourth applicant had owed him money and therefore in March 2004 had offered him the sexual services of one of the prostitutes controlled by him in lieu of payment. Mr Zh.M. had accepted. Later the fourth applicant had proposed to "sell" him the same woman for 2,000 euros ("EUR").

9. Mr N.P. stated that in July 2004 he had seen two women standing on a main road, had stopped his car and had asked them who was their boss. They had replied that it was the fourth applicant. Then Mr N.P. had called the fourth applicant, who was an acquaintance of his, and the fourth applicant had confirmed that the women were working for him.

10. Ms R.M. stated that in the beginning of 2003 the fourth applicant had suggested that she work for him as a prostitute. She had accepted and the fourth applicant had bought her clothes and a bus ticket to France. There a woman named I. had met her and had found her a hotel. Ms R.M. had been instructed to give the money she earned to Ms I. who would forward it on to the first, the second and the fourth applicants through companies providing money transfer services. After some time the fourth applicant had sent Ms R.M. to Belgium, where the second applicant had met her. Later on, Ms R.M. had returned to Bulgaria and had prostituted herself along the main roads. One day in July 2004 another procurer had stopped his car and had suggested that she work for him. She had told him that she had worked

for the fourth applicant, and had given him the latter's phone number. He had called the fourth applicant and had then left.

11. Ms D.M. stated that in February 2004 she had been contacted by the third and the fourth applicants who had suggested that she work for them as a prostitute. She had refused.

12. On an unspecified date the Pazardzhik District Public Prosecutor's Office decided that the identity of three other witnesses should be kept secret.

13. On 21 October 2004 witnesses with ID nos. 15 and 16 were questioned before a judge. Before the interviews the judge verified the two witnesses' identity.

14. Witness no. 15 stated that she had dated the third applicant in the past. According to her statements, in February 2004, while she was still under age, the third applicant took her to a hotel in the town of P. where he left her in a room with an unknown man. Then the man had told her that he had paid the third applicant to have sex with her. She spent about an hour with him. On another day witness no. 15 had met the third applicant who had introduced her to the fourth applicant and a woman named D. The third and the fourth applicants had suggested to witness no. 15 and Ms D. that they work for them as prostitutes. Witness no. 15 had accepted. Afterwards, on a number of occasions from February to April 2004 witness no. 15 had been sent either by the third or the fourth applicants to meet their clients in different towns in Bulgaria. In April 2004 witness no. 15 had informed the third and the fourth applicants that she no longer wished to work for them.

15. Witness no. 16 stated that in February 2004 she had already been engaged in prostitution when the fourth applicant had contacted her and had suggested that she work for him. She had agreed and the first, the second and the fourth applicants had made arrangements for her to travel to Denmark, France and other countries in order to work as a prostitute. She had sent them money by using money transfer services or through third parties. After some time she had told them that she no longer wished to work for them.

16. Immediately after the interviews the records of the witnesses' statements were presented to the applicants and their lawyers, and they were given the opportunity to put questions. The applicants and their lawyers stated in writing that they had acquainted themselves with the records and had no questions to put to the anonymous witnesses.

17. On 27 October 2004 the witness with ID no. 17 was questioned before a judge who verified her identity. The first, the second and the fourth applicants and the lawyers of the second and the fourth applicants participated in the interview but the witness' identity was protected. The third applicant and his lawyer, as well as the first applicant's lawyer, although duly summoned, were absent. Witness no. 17 stated that in the summer of 2003 she had accepted to work as a prostitute for the first, the

second and the fourth applicants. They had arranged her travel to and stay in Denmark, Norway and France, and she had sent money to individuals specified by them. After some time she had informed the fourth applicant that she no longer wished to work for him.

18. The District Court invited the applicants and their lawyers to put questions to witness no. 17. The first, the second and the fourth applicants expressly stated in writing that they had no questions for her.

19. On 4 November 2004 the District Court ordered three banks to inform the prosecution and the police authorities of the international money transfers ordered or received by certain individuals suspected of having been involved in the applicants' sexual procurement activities. On 24 November 2004 the District Public Prosecutor issued a similar order in respect of two other banks.

20. On an unknown date the applicants were accused of having induced into prostitution, procured or transported, individually or in complicity with each other, the three anonymous witnesses and other women.

21. The applicants were also apparently subject to special means of surveillance for an unknown period of time.

## *2. The trial stage*

22. On 22 April 2005 the District Public Prosecutor's Office filed an indictment against the applicants. On an unknown date the District Court decided that the public should be excluded from the trial.

23. On 5 July 2005 the District Court held a hearing in the case. The anonymous witnesses and nine other witnesses did not appear. The court adjourned the hearing because of irregularities in the summoning of witnesses.

24. The next hearing was held on 21 September 2005. Witness no. 15 was present, but the other two anonymous witnesses and ten other witnesses did not appear. The District Court adjourned the hearing because of irregularities in the summoning of witnesses.

25. On 4 November 2005 the District Court held a further hearing. The anonymous witnesses and eleven other witnesses did not appear. The Prosecutor's Office submitted written statements by two of the anonymous witnesses that they were aware of the criminal proceedings and did not wish to attend the hearing. The applicants' lawyers requested that the anonymous witnesses be found and questioned. The District Court held that the anonymous witnesses had been the victims of the crimes of which the applicants had been accused, and therefore were free to decide whether they wished to attend the hearing. It questioned seven witnesses, who stated that they did not know or did not remember anything about the case. However, two of the witnesses, Mr A.D. and Mr I.S., admitted that they had received international money transfers, and Mr A.D. specified that he had thus done the fourth applicant who had had no identity card a favour. The Public

Prosecutor requested that the records of the witnesses' statements before the investigator be read out in court. However, the applicants did not give their consent and the District Court dismissed that request.

26. The next hearing was held on 20 December 2005. The anonymous witnesses and several other witnesses were again absent. The Prosecutor's Office submitted a police report attesting to the fact that one of the anonymous witnesses was abroad. The District Court ordered that the anonymous witnesses and the other absent witnesses be found and brought before it. It further questioned four witnesses, including the witness R.M. After that it read out R.M.'s testimony given before a judge at the pre-trial stage (see paragraph 10 above), finding that there was inconsistency in her statements. Another witness, Ms Ts.V., stated that in October 2004 the fourth applicant had suggested that she work for him as a prostitute but she had refused.

27. The next hearing was held on 20 February 2006. The District Court examined one witness and admitted the evidence obtained from the use of special means of surveillance. The anonymous witnesses and several other witnesses once again did not appear. The Prosecutor's Office stated that two of the anonymous witnesses were abroad and that the third could not be found. The applicants' lawyers insisted that the anonymous witnesses be found and questioned, and asserted that anonymity was not justified as the applicants knew the identity of those witnesses. The District Court again ordered that the anonymous witnesses and the other missing witnesses be found and brought before it.

28. A further hearing was held on 28 March 2006. The anonymous witnesses and several other witnesses did not appear. A police report was submitted, stating that two of the anonymous witnesses had left the country and the third one had not been found. The applicants' lawyers insisted that the anonymous witnesses be found and questioned, and expressed doubts about the efforts of the prosecution authorities to ensure their presence at the trial. They further requested the cancellation of the witness protection measures, stating that the applicants were already aware of their identity. The District Court found that the reasons for protecting the anonymous witnesses persisted. Noting that the anonymous witnesses were abroad, it read out their statements given at the pre-trial stage and admitted them. It did the same with the testimony of Mr Zh.M. (see paragraph 8 above), who appeared but stated that he did not remember anything about the case, and with the testimony of three other witnesses who had been questioned before a judge at the pre-trial stage, including Mr N.P. and Ms D.M. (see paragraphs 9 and 11 above), who could not be found and summoned. The District Court also read out and admitted a number of documents, such as reports on international money transfers, police reports, and the information obtained through the secret surveillance of the applicants. The applicants' lawyers unsuccessfully requested the recusal of the panel.

29. In a judgment of 28 March 2006 the District Court convicted the applicants, individually or in complicity with each other, of having induced or attempted to induce into prostitution, procured or transported the three anonymous witnesses and the witnesses Ms R.M., Ms D.M. and Ms Ts.V. Mr Sarkizov was sentenced to three years' imprisonment and a fine, Mr Vasilev – to three years' imprisonment and a fine, Mr Petkov – to three years and two months' imprisonment and a fine, and Mr Marinkov – to five years' imprisonment and a fine. The District Court found that the victims' statements, including those of the anonymous witnesses, had been corroborated by the other evidence in the case, such as other witness statements, reports on international money transfers, reports from the border control authorities, and the information obtained through the secret surveillance of the applicants.

30. Following an appeal by the applicants, on 4 July 2006 the Pazardzhik Regional Court held a hearing. It dismissed the applicants' request that the anonymous witnesses be questioned, finding that this was not necessary.

31. In a judgment of 17 July 2006 the Regional Court upheld the sentence of 28 March 2006. It fully endorsed the findings and conclusions of the District Court.

32. The judgment of 17 July 2006 was not subject to an appeal on points of law and became final.

33. On an unknown date the applicants requested the reopening of the criminal proceedings. In a judgment of 30 May 2007 the Supreme Court of Cassation dismissed the request. It held that there had been no procedural breaches in the examination of the anonymous witnesses at the pre-trial stage, and that the applicants had been acquainted with the examination records and had explicitly stated that they had no questions to put to those witnesses. The court further emphasised that the anonymous witnesses' testimony had not been the sole or decisive evidence for the applicants' conviction, but had been corroborated by a wealth of other evidence.

## **B. Subsequent restriction on the second and the fourth applicants' leaving the country**

### *1. The second applicant*

34. The second applicant was conditionally released from prison on 26 April 2007 with a six-month supervision period, which expired, apparently, in October 2007.

35. On 4 June 2007 the Pazardzhik Regional Police Directorate prohibited him from leaving the country pending his rehabilitation (see paragraph 46 below). He appealed against the order, arguing that he had no employment in Bulgaria and that the prohibition did not contribute

to his social re-integration, was excessive and unnecessary. In a final judgment of 28 January 2008 the Supreme Administrative Court dismissed the appeal. The court held that the prohibition had been imposed in compliance with the law, on the grounds of the second applicant's conviction for an offence subject to public prosecution, and that the *ratio legis* behind the prohibition was to prevent criminally active individuals from travelling abroad until they had proved that they had been reformed.

## *2. The fourth applicant*

36. On an unknown date the fourth applicant was released from prison.

37. On 7 April 2008 the Pazardzhik Regional Police Directorate prohibited him from leaving the country pending his rehabilitation. He appealed against the order, arguing that he had served his sentence, that there were no pending criminal proceedings against him, that his work as a football manager required frequent travel abroad and that he had to accompany his son for medical treatment abroad. In a final judgment of 18 December 2008 the Supreme Administrative Court dismissed the appeal, holding that the assessment of the administrative body was not subject to judicial control. The court further held that the police authorities were not obliged to state any reasons for their decision to impose the ban.

## *3. Duration of the travel bans and their cancellation in respect of the second and the fourth applicants*

38. Seeing that the travel bans were contingent on the judicial rehabilitation of the second and the fourth applicants, these measures apparently would have lasted at least until October 2010 for the second applicant and until an unknown date in 2011 for the fourth applicant (see paragraph 46 below). However, in October 2009 the Bulgarian Identity Papers Act was amended to the effect that convicted individuals who had served their sentences could no longer be prohibited from leaving the country. As a result, all travel bans imposed before that amendment ceased to have effect as from July 2010 (see *Nalbantski v. Bulgaria*, no. 30943/04, § 25, 10 February 2011).

# II. RELEVANT DOMESTIC LAW AND PRACTICE

## **A. Anonymous witnesses**

39. Pursuant to Articles 97a and 98 of the 1974 Code of Criminal Procedure ("the 1974 CCP"), in force until 29 April 2006, measures for the protection of a witness had to be taken where there were sufficient grounds

to believe that his testimony had caused or could have caused a real risk to his life, health or property or that of his close relatives or other individuals with whom he had very close ties. The decision that a witness should be protected had to specify the reasons for the protection and its type. The pre-trial authorities and the court had a direct access to the protected witness and were obliged to verify his identity before the interview. A copy of the record of the interview with a protected witness had to be presented immediately to the accused and his lawyer who were entitled to put questions to the witness. The measures for protection could be discontinued at the request of the protected witness or where they were no longer necessary.

40. Pursuant to Article 99a of the 1974 CCP, the charges and the conviction could not be based exclusively on the testimony of anonymous witnesses.

41. These provisions were superseded by Articles 123, 124 and 141 of the 2006 CCP, in force since 29 April 2006, which repeat their text almost verbatim.

42. In a binding interpretative decision (тълк. реш. № 2 от 16 юли 2009 г. на ВКС по тълк.д. № 2/2009 г., ОЧК) of 16 July 2009 the Plenary Meeting of the Criminal Chambers of the Supreme Court of Cassation resolved a number of contentious issues relating to the construction of various provisions of the Criminal Code and the 2006 CCP on the prosecution of human trafficking. In point 5 of the decision it held that the victim of a human trafficking offence could participate in the criminal proceedings as an anonymous witness. It held that the accused's defence rights could be subjected to reasonable restrictions, including by granting anonymity status to the testifying victim, in order to protect the latter's rights. However, a strict judicial control had to be exercised over the reasons for granting anonymity to testifying victims and over the procedures aimed at counterbalancing the restriction of the defence rights. According to the Supreme Court of Cassation, in cases of anonymous witnesses the legislation provided three procedural safeguards against the risk of manipulating the evidence in favour of the prosecution: (1) the direct contact between the judge and the anonymous witness, which guaranteed, at the very least, that such a witness indeed existed; (2) the right of the accused and his lawyer to put questions to the anonymous witness immediately after his questioning; and (3) the limited probative importance the legislation attached to anonymous testimony (see paragraph 40 above). The court made reference to the case-law of this Court and concluded that the rules of fair trial would not be breached if the above procedures were strictly complied with, and notably, if the accused has been given the opportunity to put questions to the anonymous witness immediately after the questioning of the latter.

### **B. Questioning of witnesses before a judge at the pre-trial stage and reading out their testimony in court**

43. The possibility to interview a witness before a judge, in cases where it is likely that the witness would not be able to attend the trial due to illness, absence or other reasons, or where his testimony would be of “exceptional importance for the establishment of objective truth”, was provided for in Article 210a of the 1974 CCP. The provision was inserted with effect from 1 January 2000 with the aim of creating a possibility to use evidence collected at the pre-trial stage of the proceedings, while at the same time conforming to the principle of immediacy of judicial proceedings. Article 210a § 2 specifically provided that the investigator or prosecutor in charge of the interview had to ensure the witness’s presence and “a possibility” for the accused and his counsel to take part in the interview.

44. Article 279 of the 1974 CCP allowed the statement of a witness given at the pre-trial stage to be read out in court if, *inter alia*, there was a considerable discrepancy between that statement and the witness’ testimony given at the trial; if the witness had not been found and summoned or was unable to appear in court; or if he had appeared but had refused to testify at trial or had stated that he did not remember anything. If the accused was not represented, the court had to inform him that the testimony thus read out would be used for the determination of the criminal charges against him. Where the statement had been made before a judge, pursuant to Article 210a of the 1974 CCP, there was no requirement for the court examining the case to obtain the consent of the parties (Article 279 § 1).

### **C. Travel ban on convicted individuals pending their rehabilitation**

45. The relevant domestic law and practice concerning travel bans on convicted individuals pending their rehabilitation are set out in the Court’s judgment in the case of *Nalbantski*, cited above, §§ 25-29.

### **D. Rehabilitation of convicted offenders**

46. Under Article 87 § 1 of the 1968 Criminal Code, a convicted individual may benefit from judicial rehabilitation. Such rehabilitation may be granted by the court which convicted him or her, if more than three years have elapsed since the serving of the sentence, and the individual concerned has not committed another offence punishable with imprisonment, has demonstrated good behaviour and, in the case of offences committed with intent, has made good any damage done. The latter requirement may be disregarded by the court if there is good reason (Article 87 § 2).

### **E. The 1988 State and Municipalities Responsibility for Damage Act**

47. Section 1 of the 1988 State and Municipalities Responsibility for Damage Act (“the SMRDA”), as in force since July 2006, provides as follows:

“The State and the municipalities shall be liable for damage caused to individuals and legal persons by unlawful decisions, actions or omissions by their organs and officials, committed in the course of or in connection with the performance of administrative action.”

48. Pursuant to the consistent case-law of the domestic courts, for the impugned conduct to be considered unlawful, it must be in breach of national law.

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (d) OF THE CONVENTION**

49. The applicants complained that their conviction had been based to a decisive extent on anonymous witness testimony. They also complained that they had not been given the opportunity to participate in the questioning of the anonymous witnesses. They relied on Article 6 §§ 1 and 3 (d) of the Convention, which provide, as relevant, as follows:

“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; ...”

### **A. The parties’ submissions**

50. The Government contested these arguments and maintained that the applicants had been given the opportunity to put questions to these witnesses immediately after their questioning before a judge at the pre-trial stage, but had expressly refused to do so. They submitted copies of written statements of the applicants and their lawyers to this effect. They further argued that the granting of anonymity to witnesses nos. 15, 16 and 17 had been necessary for their protection and had not affected the applicants’

procedural rights. The Government also contended that the applicants' conviction had not been based to a decisive extent on the testimony of the anonymous witnesses, as their statements had been corroborated by other evidence, such as the testimony of other witnesses and the results from the secret surveillance of the applicants.

51. The applicants argued that it had not been necessary to grant anonymity to witnesses nos. 15, 16 and 17 because they had already been aware of their identity. They further stated that the anonymous witnesses and the other witnesses who had testified at the pre-trial stage had given their statements under pressure by the investigating authorities. They complained that the prosecution authorities and the trial court had made no efforts to summon the anonymous witnesses despite the applicants' requests because they had feared that the witnesses would change their testimony, as other witnesses had done.

### **B. Admissibility**

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

### **C. Merits**

53. A statement of the general principles concerning the use of incriminating statements made by absent witnesses may be found in the Court's recent judgment in *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 120-147, 15 December 2011. In that judgment the Court recalled 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 this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings. In making this assessment the Court will look at the proceedings as a whole having regard to the rights of the defence but also to the interests of the public and the victims that crime is properly prosecuted and, where necessary, to the rights of witnesses. The Grand Chamber recalled in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court's only concern is to examine whether the proceedings have been conducted fairly. Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an

adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings (see § 118 of *Al-Khawaja and Tahery* [GC], cited above).

54. There are two requirements which follow from the above general principle. First, there must be a good reason for the non-attendance of a witness. Second, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6 (the so-called “sole or decisive rule”) (ibid., § 119). As regards the application of the latter rule, the Grand Chamber concluded that 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. 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 in the case (ibid., § 147).

55. The Grand Chamber further noted that while the problems raised by anonymous and absent witnesses are not identical, the two situations are not different in principle, since each results in a potential disadvantage for the defendant. The underlying principle is that the defendant in a criminal trial should have an effective opportunity to challenge the evidence against him. This principle requires not merely that a defendant should know the identity of his accusers so that he is in a position to challenge their probity and credibility but that he should be able to test the truthfulness and reliability of their evidence, 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 (ibid., § 127).

56. Applying those principles to the present case, the Court notes that the parties did not submit the decision of the pre-trial authorities granting anonymity to witnesses nos. 15, 16 and 17. Thus, it is unable to examine how the authorities assessed the necessity of this measure. However, it is prepared to accept that as victims of sexual procurement, the anonymous witnesses must have reasonably feared reprisals at the hands of their procurers. Furthermore, the applicants’ objections in this respect were examined and dismissed by the District Court (see paragraph 28 above). As to the applicants’ argument that they managed to discover the anonymous witnesses’ identity, the Court considers it irrelevant because it does not

support the applicants' thesis that the anonymity status limited their opportunity to test those testimonies.

57. The Court further considers that in the circumstances of the present case the difficulties encountered by the defence in connection with the anonymity granted to those witnesses were sufficiently counterbalanced by the procedures followed by the judicial authorities. In particular, the anonymous witnesses were questioned at the pre-trial stage before a judge in compliance with Article 210a of the 1974 CCP (see paragraphs 13-17 and 43 above). Immediately after the interviews, the applicants and their lawyers were given the opportunity to put questions to those witnesses and to cast doubt on the credibility of their testimony. However, they expressly refused to put questions and therefore can be considered to have waived their right to challenge these statements (see, *mutatis mutandis*, *Zdravko Petrov v. Bulgaria*, no. 20024/04, § 38, 23 June 2011, with further references). The applicants, who were represented by lawyers, should have been aware that the testimony thus obtained could be used as evidence by the courts. Therefore the Court is unable to share the applicants' view that they were denied an adequate and proper opportunity to challenge and question the anonymous witnesses at the time when they made their statements.

58. The Court notes that the applicants' conviction was not based solely or to a decisive extent on the anonymous witnesses' testimonies. The domestic courts had before them a mass of other evidence, such as reports on money transfers, information from the border control database, results from the use of special surveillance measures, and statements of other witnesses, that permitted them to make a fair and proper assessment of the reliability of the anonymous witnesses' testimonies, and the applicants – to challenge or rebut them by giving evidence themselves. The courts based the applicants' conviction on a thorough analysis of all those pieces of evidence and found that they corroborated the anonymous witnesses' account of the events. It is true that even where the evidence of an absent witness has not been sole or decisive, the Court has still found a violation of Article 6 §§ 1 and 3 (d) when no good reason has been shown for the failure to have the witnesses examined (see, for example, in *Lüdi v. Switzerland*, 15 June 1992, Series A no. 238, *Mild and Virtanen v. Finland*, no. 39481/98 and 40227/98, 26 July 2005, *Bonev v. Bulgaria*, no. 60018/00, 8 June 2006; and *Pello v. Estonia*, no. 11423/03, 12 April 2007). This is because as a general rule witnesses should give evidence during the trial and that all reasonable efforts will be made to secure their attendance (see *Al-Khawaja and Tahery* [GC], cited above, § 120). The applicants have criticised the failure of the authorities to make reasonable efforts to secure the attendance of the anonymous witnesses. However, the Court notes that the domestic courts made reasonable efforts to have those witnesses located and summoned and that their efforts cannot be dismissed as inadequate (see paragraphs 26 and 27 above). Furthermore, it does not lose sight of the

fact that the domestic courts are best placed to assess whether it is appropriate to call a witness, and finds that their decision not to persist in their efforts to find those witnesses was neither unreasonable nor arbitrary in the circumstances, seeing that the applicants were already given ample opportunity to examine them and, moreover, under conditions which did not place them at a substantial disadvantage *vis à vis* the prosecuting authorities (see paragraphs 16-18 above, compare *S.N. v. Sweden*, no. 34209/96, § 49, ECHR 2002-V).

59. For these reasons, the Court finds that the applicants' rights under Article 6 were not unacceptably restricted and that they were able to participate effectively in the proceedings.

60. It follows that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention in the applicants' case.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

61. The second and the fourth applicants complained under Article 2 of Protocol No. 4 about the travel ban which had been imposed on them following their release from prison. This provision reads, in so far as relevant, as follows:

“... 2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of [that right] other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. ...”

### A. The parties' arguments

62. The Government submitted that the second and the fourth applicants had failed to exhaust domestic remedies, as they had not requested their rehabilitation, which, if granted by the courts, would have automatically put an end to their travel bans, and they had not sought damages. On the merits, the Government maintained that the travel bans had been imposed in compliance with the domestic legislation and had been necessary for the prevention of crime, in view of the nature of the offences committed by the applicants.

63. The second and the fourth applicants contended that the police authorities had not provided reasons for the travel bans and the national courts had carried out only a formalistic review of those bans. The travel bans had been arbitrary.

## **B. The Court's assessment**

### *1. Admissibility*

64. Regarding the Government's objection that the second and the fourth applicants could have requested their rehabilitation, the Court notes that under Article 87 § 1 of the 1968 Criminal Code rehabilitation was not possible during the first three years which followed the serving of a sentence (see paragraph 46 above). Therefore this opportunity was not available to the second and the fourth applicants after their release from prison. In any event, the Government have not argued that the lawfulness and justification of a travel ban could be subject to examination in rehabilitation proceedings. Therefore the Government's first objection should be rejected. As to the possibility of the second and the fourth applicants claiming damages, the Court notes that such a claim could not result in the lifting of the travel bans. Furthermore, one of the prerequisites for a successful claim under the SMRDA is the establishment of the unlawfulness of the act causing the damage (see paragraphs 47-48 above). However, the domestic courts dismissed the appeals by the second and the fourth applicants against the travel bans, finding them lawful under national law (see paragraphs 35 and 37 above). Accordingly, the Government's second objection should also be dismissed.

65. The Court further notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

### *2. Merits*

66. The Court cannot exclude that, having regard to the nature of the offences committed by the second and fourth applicants, who were apparently involved in running a prostitution ring in various European countries, a ban on them leaving the country for a certain period after the end of their prison terms could be found to be justified under Article 2 of Protocol No. 4 (see examples of travel bans found to be justified in paragraph 65 of the Court's judgment in *Nalbantski* (cited above)).

67. The Court notes, however, that in the present case the police and the domestic courts applied the same automatic approach, criticised by the Court in *Nalbantski* (cited above, §§ 62 and 66-67): they gave no reasons for the travel bans, and failed to examine the applicants' individual situation and the question of proportionality. Furthermore, as in *Nalbantski* (ibid., §§ 26, 56 and 66), the courts were only competent to review the formal lawfulness of the ban and not the need for such a measure, which was deemed to fall exclusively within the discretionary power of the police authorities (see paragraphs 35 and 37 above).

68. In these circumstances, in the absence of reasons and proper judicial review of the question of proportionality by the domestic authorities, the Court cannot speculate as to whether or not there were grounds that could have justified the travel ban imposed on the second and fourth applicants.

69. The authorities' approach was as such incompatible with Article 2 §§ 2 and 3 of Protocol No. 4, which imposes a duty on the authorities to ensure that a restriction of an individual's right to leave his or her country is, from the outset and throughout its duration, justified and proportionate. That assessment should normally be subject to review by the courts, since they offer the best guarantees of independence, impartiality and lawfulness of the procedures. The scope of their review should enable them to take account of all the factors involved (see *Gochev v. Bulgaria*, no. 34383/03, § 50, 26 November 2009, with further references).

70. As that was not done in the present case, the Court finds that there has been a breach of Article 2 of Protocol No. 4 in respect of the second and the fourth applicants.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The second and fourth applicants complained that they had not had any effective domestic remedies available to them in respect of the travel bans and that their personal and business lives had been affected by that measure. They relied on Articles 8 and 13 of the Convention.

72. In view of its findings above under Article 2 of Protocol No. 4, the Court finds that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

73. The Court considers, however, that in the circumstances of the present case no separate issue arises under Articles 8 and 13.

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

#### A. Damage

74. 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."

75. Each of the second and the fourth applicants claimed 25,000 euros (EUR) in damages generally, for violations of the Convention in their case.

76. The Government argued that the claims were excessive.

77. The Court considers that in the circumstances of the present case the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage which the second and the fourth applicants may have suffered.

### **B. Costs and expenses**

78. The second and the fourth applicants also claimed EUR 3,000 for twenty-seven hours of legal work by their lawyer in the proceedings before the domestic courts and the Court. In support of their claim they presented contracts and time sheets.

79. The Government considered these amounts excessive and unsubstantiated.

80. 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 the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award jointly to the second and the fourth applicants the sum of EUR 1,000 for the proceedings before the Court.

### **C. Default interest**

81. 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* admissible the applicants' complaints under Article 6 §§ 1 and 3 (d) and the complaints of the second and the fourth applicants under Article 2 of Protocol No. 4 and Articles 8 and 13 of the Convention, and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention in respect of the applicants;
3. *Holds* that there has been a violation of Article 2 of Protocol No. 4 in respect of the second and the fourth applicants;

4. *Holds* that no separate issues arise under Articles 8 and 13 of the Convention;
5. *Holds* that the finding of a violation of Article 2 of Protocol No. 4 constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the second and the fourth applicants;
6. *Holds*
  - (a) that the respondent State is to pay jointly to Mr Vasilev and Mr Marinkov, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to them, in respect of costs and expenses, to be converted into Bulgarian leva 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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Lech Garlicki  
President