



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

FIRST SECTION

**CASE OF TRAMPEVSKI v. THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA**

(Application no. 4570/07)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

10/10/2012

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

In the case of Trampevski v. the former Yugoslav Republic of Macedonia,

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

Nina Vajić, *President*,
Peer Lorenzen,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 4570/07) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Macedonian national, Mr Tome Trampevski (“the applicant”), on 16 January 2007.

2. The applicant was represented by Mr N. Stojkov, a lawyer practising in Bitola. The Macedonian Government (“the Government”) were represented by their former Agent, Mrs R. Lazareska Gerovska, succeeded subsequently by their present Agent, Mr K. Bogdanov.

3. The applicant alleged, in particular, that he had not been able to confront the witnesses whose statements given in the pre-trial proceedings had served as a basis for his conviction.

4. On 6 May 2011 this complaint was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Bitola. He is a taxi driver.

A. Pre-trial proceedings concerning the applicant*1. Events of 2 November 2005*

6. On 2 November 2005 an investigating judge of the Bitola Court of First Instance (“the trial court”) heard, in the presence of the public prosecutor alone, oral evidence from E.J and R.M., suspected migrants from Albania (“the migrants”), who had attempted to enter Greece illegally from the territory of the respondent State. Both of them waived the right to an interpreter and gave evidence in Macedonian. According to the court record, they gave details as regards their travel from Albania to Bitola, a city located near the border with Greece. Both confirmed that at Bitola bus station, they had asked a taxi driver to take them to Greece, but the latter had refused because they had no travel documents.

7. E.J. further stated:

“... My friend R. (referring to R.M.) stopped another taxi driver. He was the one who drove us to a water canal. We told him that we wanted to go to Greece and that we didn’t have any travel documents, but he said: ‘I will take you, but each of you will have to pay 160 euros (EUR)’. We immediately paid. While driving, he advised us, in case the police appeared, to leave the car and run. In case we were apprehended, we were supposed to deny that we knew him or that he knew what our final destination was. We arrived at some place and he told us which way to follow. He told us that we would reach a water canal. After we crossed it, we ... would be in Greece. Before we got into the cab, the driver told us: ‘I served three years’ imprisonment in Greece and I know how to get people into Greece’ ... After he had told us which way to go, he went back. We continued walking and we reached the canal. We couldn’t cross it because it was full of water. We went back. ... The police stopped us... The cab was white ... The taxi driver did not give any money back to me. My friend R. was sitting in the front seat, he talked with him ... We haggled about the price, namely that EUR 160 was too much, that we didn’t have money, but he told us: ‘it’s impossible, if the police arrest me, I’ll go to jail.’”

8. R.M. stated:

“... We stopped a taxi driver who asked where we would like to go. E. and I told him that we wanted to go to Greece. He asked if we had any travel documents, [like] a passport [or] licence, [and] we said that we were not in possession of any. He told us: ‘if you have no documents, I can take you through another road where there are no police, but you have to pay EUR 160 each or EUR 320 in total’. We told him that we didn’t have a lot of money, so he reduced the price to EUR 100 each. Actually, we paid EUR 160 each, we entered the cab and while driving, we asked him to reduce the price. He agreed to drive us for EUR 100 each and when we stopped, he returned the remainder. We arrived at some place, he hid the car and told us: ‘you’ll take this road, you’ll reach a water canal, which you’ll cross ... and you’ll be in Greece’. He left us there and he went back to Bitola. We walked, as he advised us, towards the canal, but we couldn’t cross it because it was full of water. We joined the road again, I know that we saw a restaurant, then we passed by a police station. We continued walking and after a kilometre, two police officers stopped us ... The taxi driver that drove us ... had a white cab ... While driving, he (the taxi driver) told us ‘if the police stop you, you’ll say that you have paid EUR 10 each and you won’t say that you don’t have

visas'. We were also supposed to deny that the taxi driver knew what our final destination was..."

9. E.J. and R.M. were shown photographs of nine people, one of whom was the applicant. Both of them identified the applicant as the taxi driver who had driven them on the critical date.

10. On the same date, the public prosecutor successfully requested that the investigating judge open an investigation concerning the applicant on grounds of a reasonable suspicion of smuggling migrants. That request was not based on the migrants' statements. The investigating judge heard the applicant, who was assisted by counsel. According to the depositions taken on that date, the applicant stated:

"I drive an orange Mitsubishi van ... It was 6.45 pm. when I came back from Ohrid. I stopped at the bus station, which is a regular taxi post. There are two small kiosks where I often drink coffee. I was with D.M. (who was later in the proceedings identified as M.T.) ... a saleswoman was also present ... the two witnesses came and asked me, in Macedonian, if I could drive them to Bukovo village. I accepted and asked that they pay 150 Macedonian denars (MKD) (equivalent to EUR 2.50) ... E.J. said that they did not have a lot of money, so I asked them to pay MKD 120. After I left them in Bukovo, I came back immediately ... I didn't ask if they had travel documents because they spoke Macedonian and I didn't suspect that they were foreign nationals ... It is not true that I asked them to pay in euros. I served a prison sentence of three and a half years in Greece for such a crime and I won't drive anyone, even for a million euros ... The persons concerned (referring to E.J. and R.M.) were not carrying any bags or other baggage with them..."

11. In an identification parade organised the same day, E.J. and R.M. identified the applicant as the taxi driver who had driven them on the critical date.

12. As stated by the Government, at 7.30 pm. on 2 November 2005 the migrants were deported to Albania.

2. Other actions taken in the pre-trial proceedings

13. On 7 November 2005 the applicant requested that the trial court examine Ms S.S. and Mr M.T., eyewitnesses who had been present at Bitola bus station when he had agreed to drive the migrants.

14. On 8 November 2005 the investigating judge heard T.S. and B.G., police officers who had apprehended the migrants near the border with Greece. According to their statements, on 1 November 2005 they had apprehended the migrants at the crossroads at a place called Velushina (*Veluska raskrsnica*). One of them had been carrying an Albanian identity card and a certain amount of Macedonian denars. The migrants had been fluent in Macedonian. They had told them that a taxi driver had taken them to a nearby location which they could not specify. According to T.S., the migrants had stated that the taxi driver had asked them to pay EUR 100 each for the journey. According to B.G., the migrants had paid EUR 150 each.

The migrants had said that they were unemployed and wanted to find a job in Greece.

B. Criminal proceedings against the applicant

15. On 11 November 2005 the public prosecutor lodged an indictment charging the applicant with smuggling of migrants. According to the indictment, at 6.45 pm. on 1 November 2005 the applicant drove the migrants from Bitola bus station to the Velushina crossroads, from where they were supposed to enter Greece illegally, but they were stopped by border police of the respondent State. The migrants paid the applicant EUR 100 each for the journey. The public prosecutor requested that the trial court summon T.S. and B.G. and read out the migrants' statements given in the pre-trial proceedings, as well as admit in evidence court records concerning the identification of the applicant.

16. At a hearing held on 23 March 2006, the applicant confirmed his statement given in the pre-trial proceedings. After the trial court had drawn the applicant's attention to certain aspects of the migrants' statements, the applicant contested the assertion that they had paid him EUR 100 each and claimed that he had asked that each migrant pay MKD 120 instead. He further stated that he had not talked to the migrants during the journey. Lastly, he denied that he had told them that he had served a prison sentence in Greece.

17. Ms S.S., the saleswoman who had been in the kiosk at the bus station on the critical date, stated that the migrants had asked the applicant to drive them to the village of Bukovo. One of them had bought chewing gum and cigarettes in order to obtain change. She had not suspected that the migrants had not been citizens of the respondent State.

18. Mr M.T. confirmed that one of the migrants had entered into the kiosk in order to ask for change. He had heard the discussion between the migrants and the applicant and stated that they had agreed a price for a journey to Bukovo, for which the migrants had been required to pay MKD 120-150 each.

19. The next and last hearing before the trial court was fixed for 13 April 2006. In the absence of a request for examination of any witnesses, the trial court read out the migrants' statements given before the investigating judge on 2 November 2005. According to the court record of that date, the court did not ask the applicant or his lawyer whether they agreed to the reading out of the depositions. There is also no indication that both the applicant and his counsel stated that they had no objection to the reading out.

20. In making concluding remarks, the applicant's legal representative analysed the migrants' statements and complained that the applicant had not been able to confront them regarding the drop-off location and the price of

the journey. As to the latter, he also noted that the migrants had provided inconsistent evidence.

21. On the same date, the trial court convicted the applicant and sentenced him to one year's imprisonment. It established that he had driven the migrants from Bitola bus station to the Velushina crossroads, from where they had walked towards the border with Greece but had subsequently been arrested by the police. The migrants had paid EUR 100 each for the journey. The court established that the facts concerning the migrants' journey and the sequence of events after they had entered the respondent State were as they had described in their written statements of 2 November 2005. Relying on this evidence, the court further established that the applicant had been aware that E.J and R.M. had been migrants from Albania who had entered the respondent State illegally and had no travel documents in their possession. In this connection, it accepted that the applicant had told them that he had served a prison sentence in Greece and that he knew how to get people into Greece. It acknowledged the inconsistencies between the applicant's and the migrants' evidence as regards the drop-off location. However, it established that the applicant had driven them to the Velushina crossroads on the basis of the fact that T.S. and B.G. had apprehended the migrants at that location, which was often used for smuggling migrants. It also examined the evidence given by S.S. and M.T., but disregarded it as unreliable.

22. On 22 June 2006 the applicant, relying on sections 355 §§ 1 (11) and 2 of the Criminal Proceedings Act (the "Act", see paragraph 28 below), appealed arguing, *inter alia*, that on the basis of the evidence given by the migrants the trial court had established that (i) he had known that they had been illegal migrants, (ii) he had transferred them to the Velushina crossroads for EUR 100 each and (iii) they had each paid that sum. In this connection, he claimed that it had been unreasonable for him to suspect that E.J and R.M. had been migrants from Albania because they had been fluent in Macedonian and there were many Albanians who lived in Bitola and its surroundings. He complained that he had not been given the opportunity to confront them during the investigation in order to establish the drop-off location and the price of the journey. As to the latter point, he stated that the migrants had provided inconsistent evidence.

23. At a public session held on 17 October 2006, the Bitola Court of Appeal dismissed the applicant's appeal and confirmed the trial court's judgment. After detailed analysis of the migrants' statements, which it regarded as clear and consistent, the court found no reasons to depart from the facts as established by the trial court with the exception of the drop-off location, which had been irrelevant to the applicant's guilt. It also considered as irrelevant the fact that the migrants had been fluent in Macedonian since, as they had confirmed in their statements, they had clearly told the applicant that they had intended to enter Greece illegally.

The court did not address the applicant's complaint that he had been denied the right to cross-examine the migrants.

24. On 13 November 2006 the applicant lodged, on the basis of section 413 of the Act (see paragraph 31 below), an appeal on points of law (*барање за вонредно преиспитување на правосилна пресуда*) with the Supreme Court, in which he restated that he had not been allowed to confront E.J and R.M. during the investigation in order to establish whether they had been Albanian migrants, how much they had paid him for the journey and whether he had driven them to Bukovo, which was three kilometres away from Bitola bus station and fifteen kilometres away from the border with Greece, or to the Velushina crossroads, which was only one kilometre away from the border. He further denied that he had told the migrants about his prison sentence in Greece.

25. On 20 December 2006 the Supreme Court dismissed the applicant's appeal on points of law, finding no grounds to depart from the facts as established and the reasons given by the lower courts. It indicated that it was beyond its competence to examine the applicant's complaints under section 355 § 1 (11) of the Act and to reassess the facts as established. However, in view of section 409 of the Act (see paragraph 29 below), it found no cogent elements that would conflict with the facts as established. It did not comment on the applicant's complaint that he had not been allowed to cross-examine the migrants.

C. Other proceedings against the applicant

26. According to the applicant, on an unspecified date in 2003 his pre-trial detention was ordered on account of smuggling migrants. He was released after three days due to a lack of evidence against him. He did not submit any court decision in this respect.

27. In other criminal proceedings launched in 2006, the applicant was charged with the smuggling of an Albanian migrant. According to a deposition made on 14 December 2006, Mr N.M., a witness examined on the applicant's request, admitted that he had transferred the migrant to the border crossing with Greece. The applicant did not submit any other documents concerning these proceedings.

II. RELEVANT DOMESTIC LAW

28. According to section 355 §§ 1 (11) and 2 of the Criminal Proceedings Act 1997, as in force at the relevant time, there was a substantial procedural flaw if the judgment concerned contained no or contradictory reasoning or there had been a violation of the defence rights at the trial.

29. Section 409 provided that if there was considerable doubt as to the relevant facts established in a judgment against which an appeal on points of law had been lodged with the result that it was not possible to review it on the merits, the court should quash the judgment and order a retrial before the same or another trial court.

30. Section 411 §§ 1 and 2 provided that a person convicted by a final judgment and sentenced to imprisonment could lodge an appeal on points of law (*барање за вонредно преиспитување на правосилна пресуда*).

31. Under section 413, an appeal on points of law could be submitted in the event of a violation of the Criminal Code, the existence of any of the procedural flaws specified in section 355 § 1 (1), (5), (8), (9), and (10) of the Act, or a violation of defence rights of the convicted person by the trial court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. Without relying upon any Article of the Convention, the applicant complained that he had been denied the right to a fair trial because he had not had the chance to confront the migrants. The Court considers that this complaint should be analysed under Article 6 §§ 1 and 3 (d) of the Convention, which, in so far as relevant, read 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.”

A. Admissibility

1. The parties' submissions

33. The Government submitted that the applicant had not exhausted domestic remedies. In particular, he had not clearly raised this complaint before the national courts, at least in substance and in compliance with the

formal requirements laid down in domestic law. In this connection, he had not complained during the investigation that he had not been able to confront the migrants, he had not objected when the migrants' statements had been read out at the trial and he had not requested during the trial that the court examine the migrants. In his appeals, the applicant had limited himself to complaining that he had not been allowed to cross-examine the migrants during the investigation. Furthermore, he had not raised a complaint in relation to his right to mount a defence. A reference to the statutory provisions (sections 355 § 2 and 413 of the Act, see paragraphs 28 and 31 above) that provided for the right to mount a defence, without any further explanation, was insufficient.

34. The applicant contested the Government's arguments, stating that it was not for the defence to correct errors committed by prosecuting or judicial authorities. A person was considered innocent unless otherwise established by a final court decision. If facts relevant for a criminal offence could not be established, the courts were required not to decide the matter to the detriment of the accused.

2. *The Court's assessment*

35. The Court reiterates that the purpose of the exhaustion rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Accordingly, this rule requires applicants to first use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach (see *Aksoy v. Turkey*, 18 December 1996, § 51, *Reports of Judgments and Decisions* 1996-VI).

36. While in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not merely require that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally also requires that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I, and *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

37. In the present case, the Court notes that on 2 November 2005, one day after the critical event, the investigating judge, in the presence of the

public prosecutor alone, examined the migrants. The identity of the applicant, as potential perpetrator of the crime, was unknown until the migrants had identified him on the photographs and in the line-up organised on that date. The applicant could not seek to confront the migrants until their identity and the fact that they had produced oral evidence in the investigation had been brought to his attention, which, according to the case file, was on 11 November 2005, the date on which the public prosecutor submitted the indictment (see paragraph 15 above). In the concluding remarks before the trial court (see paragraph 20 above) and in his appeals before the Appeal and Supreme Courts (see paragraphs 22 and 24 above), the applicant complained that he had not been able to confront the migrants during the investigation. In doing so, he contested the credibility of their evidence, pointing to concrete aspects of their statements. The Court notes that the applicant's appeals were based, *inter alia*, on sections 355 § 2 and 413 § 1(3) of the Act (see paragraphs 28 and 31 above), according to which an alleged violation of defence rights was a valid ground for quashing a defective judgment. The appellate courts were accordingly well placed to consider whether the proceedings, in view of the applicant's complaint, were fair (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 35, 15 December 2011). It is true that the applicant did not explicitly phrase this complaint as a violation of his right to mount a defence. However, the Court considers that it would be unduly formalistic to interpret this failure to the applicant's detriment, in particular given that it was the only complaint concerning his defence rights. Lastly, with regard to the Government's submissions that the applicant had neither objected that the trial court had read out the migrants' statements (see paragraph 19 above) nor explicitly requested that the migrants be heard at the trial, the Court considers, in the first place, that the applicant cannot be regarded as having waived, in an unequivocal manner, his rights under Article 6 as to the opportunity to examine the migrants (see *Vladimir Romanov v. Russia*, no. 41461/02, § 98, 24 July 2008), and secondly, that the Contracting States are required to take positive steps, in particular to enable an accused to examine or have examined witnesses against him (see *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII). In such circumstances, the Court is convinced that the applicant had raised, at least in substance and in compliance with the formal requirements laid down in domestic law, the complaint that he had not been allowed to confront the migrants. Consequently, the Government's non-exhaustion objection must be rejected.

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

B. Merits

1. *The parties' submissions*

39. The applicant submitted that his conviction had been based, to a decisive extent, on the evidence given by the migrants. He further denied that the migrants' deportation to Albania had had any bearing on the fact that he had not been allowed to cross-examine them.

40. The Government accepted that the applicant had not had a confrontation with the migrants at any stage of the proceedings. However, this was due to the fact that the authorities of the respondent State had had no means to ensure the attendance of the migrants at the trial after they had been deported to Albania (see *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, ECHR 2001-X). On the other hand, the applicant had been allowed to present his case, to contest the migrants' statements and to confront T.S. and B.G.

41. Furthermore, the Government contested the assertion that the evidence given by the migrants had been the "sole" or "decisive" evidence against the applicant. In this connection, they argued that other evidence had been admitted at the trial which had supported the applicant's guilt. The domestic courts had considered all available evidence and had given sufficient reasons for taking no account of the evidence proposed by the defence. Lastly, the applicant had not sought to confront the migrants in order to establish whether he had known, on the critical date, that they had not been in possession of any travel documents and that they had intended to enter Greece illegally. The migrants' statements, to the extent challenged by the applicant, had been irrelevant for his conviction, as the Court of Appeal had stated in its judgment of 17 October 2006 (see paragraph 23 above).

2. *The Court's assessment*

42. The Court recalls 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 Article 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 (see *Taxquet v. Belgium* [GC], no. 926/05, § 84, 16 November 2010).

43. It further reiterates that, as a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence which defendants seek to adduce (see *Atanasov v. the former Yugoslav Republic of Macedonia* (no. 2), no. 41188/06, § 33, 19 April 2011).

44. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use as evidence of statements obtained at the stage of a police inquiry

and judicial investigation is not in itself inconsistent with Article 6 §§ 1 and 3 (d), provided that the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him – either when he was making his statements or at a later stage of the proceedings (see *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C; *Isgrò v. Italy*, 19 February 1991, § 34, Series A no. 194-A; and *Vladimir Romanov*, cited above, § 100). The rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or to a decisive extent, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined, either during the investigation or at trial (see *Khametshin v. Russia*, no. 18487/03, § 32, 4 March 2010).

45. The Court considers that the present case must be distinguished from the *Solakov* case, in which the domestic courts clearly stated that there were valid reasons making it impossible or extremely difficult to produce the relevant witnesses at the trial (see *Solakov*, cited above, §§ 25 and 30). In the present case, the trial court made no attempt to find the migrants after they had been deported, nor did it give any explanation justifying the failure to ensure their attendance at the trial. On the other hand, it is not in doubt that the applicant could have confronted the migrants during the investigation while they were still in the respondent State (see paragraph 11 above). Neither the domestic courts nor the respondent Government stated that there existed any particular circumstances justifying the failure to organise a confrontation at the investigation stage.

46. The Court must therefore assess the impact that the applicant's inability to examine the migrants had on the overall fairness of his trial. In this connection it must examine the significance of the untested evidence in order to determine whether the applicant's rights were unacceptably restricted. Three issues need to be examined: first, whether it was necessary to admit the migrants' statements; second, whether their untested evidence was the sole or decisive basis for the applicant's conviction; and third, whether there were sufficient counterbalancing factors including strong procedural safeguards to ensure that the trial, judged as a whole, was fair within the meaning of Article 6 §§ 1 and 3(d) (see *Al-Khawaja and Tahery*, cited above, § 152).

47. It is not in doubt that the interests of justice were in favour of admitting in evidence the migrants' statements given before the investigating judge. They were directly involved in the incident and were the only eyewitnesses who could have produced evidence relevant for the applicant's conviction. The other evidence was that given by T.S. and B.G., the police officers who had apprehended the migrants, and the evidence given by Ms S.S. and Mr M.T., who had been present at Bitola bus station when the applicant had agreed to drive the migrants. The former gave

evidence concerning the place of arrest and the migrants' comments regarding the incident (see paragraph 14 above). Consequently, their evidence was circumstantial in nature and, at best, could only provide indirect support for the applicant's guilt. Ms S.S. and Mr M.T. produced evidence corroborating some of the details of the applicant's testimony (see paragraphs 17 and 18 above), but the trial court disregarded it as unreliable. In such circumstances, it is clear that the evidence given by the migrants was obviously of great weight and without it the chances of the applicant's conviction would have been at least significantly reduced. In support of this conclusion are the impugned judgments, in which the domestic courts relied heavily on this evidence in order to establish the applicant's guilt (see paragraphs 21 and 23 above).

48. The Court notes that despite their strong similarities, there were certain inconsistencies in the migrants' statements – to which the applicant referred in his pleadings before the domestic courts (see paragraphs 20 and 22 above). The applicant challenged the trustworthiness of this evidence on several grounds, namely as regards the drop-off location, the price of the journey, whether he had been aware that his passengers had been Albanian migrants and whether he had disclosed his criminal record concerning similar crimes (see paragraphs 21, 23 and 25 above). However, his submissions were left unexamined.

49. That the applicant was in a position to challenge or rebut the migrants' statements by giving evidence himself or examining other witnesses cannot be regarded a sufficient counterbalancing factor to compensate for the handicap under which the defence laboured. The applicant was unable to test the truthfulness and reliability of the evidence produced by the migrants by means of cross-examination despite the fact that it was the only direct evidence against him (see *Al-Khawaja and Tahery*, cited above, §162 and 165). Consequently, he was convicted on the basis of evidence in respect of which his defence rights were appreciably restricted.

50. In such circumstances the Court considers that there has been a violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant complained that his right to liberty had been violated as a result of his pre-trial detention for three days in 2003 (see paragraph 26 above). He also complained, without providing any further explanation, about the proceedings that he claimed had been instituted against him in 2006 (see paragraph 27 above).

52. The Court has examined these allegations. However, in the light of all the material in its possession, and in so far as the matters raised by the

applicant are 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.

53. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed the equivalent of EUR 3,720 in respect of pecuniary damage for loss of income during his imprisonment (see paragraph 21 above). He further claimed EUR 36,500 in respect of non-pecuniary damage for emotional suffering caused by his imprisonment. On the same basis, he also claimed EUR 5,000 for emotional distress suffered by his family.

56. The Government contested these claims as unsubstantiated and excessive. Furthermore, they stated that there was no causal link between the violations alleged and the damage claimed.

57. The Court notes that the applicant's claims under this head were submitted in relation to his imprisonment and they did not concern the violation found. In this connection, it considers that the basis for an award of just satisfaction in the present case must be the denial of opportunity for the applicant to confront the migrants under Article 6 §§ 1 and 3 (d) of the Convention. It cannot speculate as to what the outcome of the impugned proceedings would have been had there been no violation on this ground. It therefore finds no causal link between the damage claimed and its finding of a violation of Article 6. Accordingly, the Court makes no award under this head.

B. Costs and expenses

58. The applicant also claimed the equivalent of EUR 570 for costs and expenses incurred before the domestic courts and EUR 190 for those incurred before the Court. These figures concerned lawyer's fees according to the rate scale of the Macedonian Bar. The applicant submitted an

itemised list of costs. He also claimed EUR 80 for mailing, copying and translation expenses. As to this latter claim, no payment slips or other supporting documents were provided by the applicant.

59. The Government contested these claims as unsubstantiated and excessive. They further stated that the costs claimed were not necessarily incurred.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). Having regard to the fee note submitted by the applicant, the Court finds that only EUR 340 related to lawyer's fees which were expended with a view to seeking prevention before the national courts of the violation found by the Court (see, *mutatis mutandis*, *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007, and *Trajče Stojanovski v. the former Yugoslav Republic of Macedonia*, no. 1431/03, § 46, 22 October 2009). Furthermore, the applicant having substantiated the full amount claimed in respect of the legal fees expended in the proceedings before it, the Court finds the sum of EUR 190 reasonable and awards it to him. It therefore considers that the applicant is entitled to be reimbursed a total of EUR 530, plus any tax that may be chargeable to him thereon. Lastly, it rejects as unsubstantiated the applicant's claim for reimbursement of mailing, copying and translation expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the inability of the applicant to confront the migrants 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, EUR 530 (five hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, 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 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President