



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

FIRST SECTION

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

(Application no. 45959/09)

JUDGMENT

STRASBOURG

2 June 2016

FINAL

02/09/2016

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

In the case of Mitrov v. the former Yugoslav Republic of Macedonia,
The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ledi Bianku, *President*,
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan,
Pauliine Koskelo, *judges*,
and Abel Campos, *Section Registrar*,

Having deliberated in private on 10 May 2016, Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 45959/09) 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 Slobodan Mitrov (“the applicant”), on 17 August 2009.

2. The applicant was represented by Mr P. Dokuzov, a lawyer practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mr K. Bogdanov.

3. Mirjana Lazarova Trajkovska, the judge elected in respect of the former Yugoslav Republic of Macedonia, was unable to sit in the case (Rule 28). On 28 April 2016 the President of the Chamber decided to appoint Pauliine Koskelo to sit as an *ad hoc* judge (Rule 29 § 2 (a)).

4. The applicant complained under Article 6 of the Convention that the trial court lacked impartiality and that the principle of equality of arms had been violated.

5. On 4 April 2014 these complaints were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in Strumica.

7. At the time when the criminal proceedings (see paragraphs 11-32 below) were initiated, there were four judges working in the criminal section of the Strumica Court of First Instance (“the trial court”): Judges M.A., C.K., T.D. and G.M. In addition, Judge B.B. was an investigating judge in the trial court, Judge V.D. worked on cases concerning minor offences, and Judge S.D. was on sick leave.

8. From 2002 Judge C.K. was a clerk (*стручен соработник*) at the trial court. From 2004 she worked with Judge M.A. and two other judges. She was appointed as a judge in February 2005.

9. In 2004 Judge M.A. became president of the criminal section of the trial court.

10. On 26 November 2006 the applicant was involved, as the driver of a car, in a traffic accident in which the eighteen-year-old daughter of Judge M.A. was killed.

11. On 19 January 2007, after examining the applicant in the presence of his lawyer, Judge B.B. opened an investigation against him.

12. Between 25 January and 7 February 2007 Judge B.B. heard evidence from five eyewitnesses, two experts and the victims’ representative. The applicant’s representative was only present when two of the eyewitnesses gave their statements.

13. On 8 February 2007, Judge B.B. commissioned an expert report, to be prepared by the Forensic Bureau (*Биро за судски веештачења*) (“the Bureau”), regarding the reasons for the accident, the speed at which the applicant had been driving at the relevant time, whether the accident could have been avoided, and other relevant matters.

14. On 14 March 2007 a mechanical engineer from the Bureau drew up an expert report (“the first expert report”), relying partly on the statements given by the witnesses before Judge B.B.

15. On 20 April 2007 the public prosecutor charged the applicant with “severe crimes against the safety of people and property in traffic” (*тешки дела против безбедноста на луѓето и имотот во сообраќајот*). On 15 May 2007 a three-judge panel of the trial court, presided over by Judge T.D., dismissed an objection (*приговор*) by the applicant to the indictment.

16. In June 2007 an alternative expert report was drawn up, at the applicant’s request, by a private expert agency (“the second expert report”).

17. On 12 July 2007 the applicant asked the president of the trial court to exclude the trial court judges who acted in the criminal proceedings, namely Judge C.K. and the other judge on the trial court panel which were acting in the applicant’s case, as well as Judges G.M., S.D. and T.D., given that the case concerned a traffic accident in which the daughter of a judge in the criminal section of the court had been killed. He further complained that the investigation had been unfair, and alleged that Judge B.B. had been partial. Finally, he stated that he hoped that the president of the trial court would

ask the President of the Štip Court of Appeal (“the appellate court”) to assign the case to another first-instance court.

18. On the same day Judges C.K. and T.D., who had been appointed as members of the panel in the applicant’s case, gave written statements that the fact that their colleague’s daughter had died in the accident would not influence their adjudication. The president of the trial court referred to those statements, and dismissed the application for exclusion in respect of Judges C.K. and T.D., finding that the conditions of section 36(2) of the Criminal Proceedings Act (see paragraph 33 below) had not been fulfilled. The president of the trial court further rejected as inadmissible the application concerning Judges G.M. and S.D., given that under section 38(4) of the Criminal Proceedings Act an application for exclusion could only be lodged in respect of an individual judge who was acting in a particular case (see paragraph 33 below).

19. The trial continued, and on the same day the applicant lodged a fresh application for exclusion of Judge T.D., given that he had presided over the three-judge panel which had dismissed the applicant’s objection to the indictment (see paragraph 15 above).

20. On 13 July 2007 the president of the trial court upheld the latest application for the exclusion of Judge T.D.

21. At a hearing held on 26 September 2007 the trial court (Judge C.K. presiding, and including Judge S.D. and three lay judges) admitted in evidence the second expert report (see paragraph 16 above) submitted by the applicant. The applicant asked the trial court to examine the experts who had prepared both reports, in order to clarify their findings, which he described as contradictory.

22. At a hearing held on 19 October 2007 the composition of the trial court panel was changed to Judge C.K. (as president of the panel), Judge V.D., and three lay judges. At that hearing the trial court commissioned a fresh expert report (*вештачењето да се обнови со други вештаџи*) to be prepared by three experts from the Bureau, not those who had drawn up the report of 14 March 2007 (see paragraph 14 above).

23. On 31 January 2008 a fresh expert report was issued by the Bureau (“the third expert report”).

24. On 4 March 2008 one of the experts who had drawn up the third expert report was examined at the trial.

25. On 5 March 2008 the applicant’s lawyer, in his closing remarks, submitted that the trial court was adjudicating a case concerning an incident in which their colleague’s daughter had died. He argued that the practice in similar cases was that the judges withdrew in order not to cast doubt on the court’s impartiality.

26. On the same day the trial court convicted the applicant and sentenced him to four years and six months’ imprisonment. It found that the applicant had been driving at excessive speed and under the influence of

alcohol. It dismissed the applicant's arguments that the victim in the accident had ignored a "Stop" sign and was not wearing a seat belt. It based its findings on the third expert report and the oral evidence. It did not give any weight to the second expert report. Finally, the trial court upheld the compensation claim lodged by Judge M.A., her husband and her other daughter against the applicant's insurance company, which had acknowledged the claim (*го призна барањето*).

27. On 4 April 2008 the applicant appealed against the judgment, arguing, *inter alia*, that the case should have been assigned to another court, and that Judge C.K. had previously worked as a court clerk delegated to Judge M.A. for several years. In this connection he submitted that there had already been such transfers in cases concerning criminal proceedings against a public prosecutor and a president of a court. There had been grounds for exclusion under section 36(2) of the Criminal Proceedings Act. The trial court had not provided any reasoning in respect of the second expert report, and had not admitted evidence proposed by the applicant. The third expert report was identical to the first and contradictory to the second, as regards the speed at which the applicant had been driving at the time of the accident. The applicant further requested that the case be remitted and heard either before a different panel of the trial court or before a different court.

28. On 24 September 2008 the appellate court dismissed the applicant's appeal, upheld the prosecutor's appeal, and increased the sentence to six years' imprisonment. The part of its judgment concerning the alleged lack of impartiality reads as follows:

"The complaints about a violation of section 36(2) of the [Criminal Proceedings Act] are groundless ... [the applicant's] defence lawyer applied for exclusion of [Judges C.K., G.M., S.D. and T.D.]. According to the statements given by the Judges, the President of the Court of First Instance took a decision ... by which he dismissed the application for exclusion, for reasons stated in the decision."

29. The appellate court further held that the second expert report had not been ordered by the court, that the experts had not been warned of their duties and had not taken an oath, that the court had not established which matters should have been addressed by the report, and that it was for the trial court to decide whether it would accept the report. As regards the applicant's complaint that evidence proposed by him had not been admitted at the trial, the appellate court held that this did not amount to a violation of the applicant's right to defence, as the trial court was not obliged to accept all proposed evidence.

30. On 11 November 2008 the applicant lodged a request for extraordinary review of a final judgment (*барање за вонредно преиспитување на правосилна пресуда*), arguing that the trial court had refused his request for an additional expert report (*супервештачење*) to be commissioned from an independent institution. Citing Articles 6 and 8 of

the Convention, the applicant complained that Judge C.K., the clerk of the victim's mother (Judge M.A.), had adjudicated the case, and that Judge M.A. was the president of the criminal section of the trial court. He further complained about the refusal to assign the case to another competent court.

31. On 13 January 2009 the Supreme Court dismissed the applicant's request and confirmed the lower courts' judgments. It endorsed the lower courts' findings and reasoning, without providing further reasoning in respect of the applicant's complaint concerning the judges' alleged bias.

32. On 21 September 2010 and 29 March 2011 the Supreme Court dismissed two requests by the applicant for extraordinary mitigation of his sentence (*барање за вонредно ублажување на казната*).

II. RELEVANT DOMESTIC LAW

A. Criminal Proceedings Act (consolidated text) (*Закон за кривичната постапка (пречистен текст)*, Official Gazette no. 15/2005)

33. The relevant provisions of the then applicable Criminal Proceedings Act provided as follows:

4. Transfer of competence *ratione loci*

Section 31

“(1) If the competent court is prevented from adjudicating for reasons of facts or law, it has to notify the court at the next level of jurisdiction, which, after hearing the public prosecutor (in cases when the proceedings are initiated by the public prosecutor), will assign another court which is competent *ratione materiae* from its region.

(2) ...”

Section 32

“(1) A court at the next level of jurisdiction can assign a case to another court which is competent *ratione materiae* from its region if that court can conduct the proceedings more conveniently or for other important reasons.

(2) The court can make a decision as in subsection (1) of this section at the proposal [*предлог*] of the investigating judge, the single judge or the judge presiding over the panel, or at that of the public prosecutor acting before the court which decides on the transfer of the competence *ratione loci*, in cases when the proceedings are initiated by the public prosecutor.”

EXCLUSION

Section 36

"(1) A judge or a lay judge cannot perform his or her judicial function if:

- 1) he or she has suffered damage as a result of the criminal offence;
- 2) the accused, his or her defence lawyer, the claimant (*тужителот*), the damaged party or their legal or other representative is a married or unmarried partner or a relative ...
- 3) he or she is a guardian, an adoptive parent, an adoptive child ... of the accused, his or her defence lawyer, the claimant, or the damaged party;
- 4) he or she has taken investigating actions in the same criminal proceedings or has participated in assessing the indictment before the trial, or has participated in the proceedings as a claimant, defence lawyer, legal or other representative of the damaged party or the claimant, or has been heard as a witness or as an expert; and
- 5) in the same proceedings, he or she has participated in the rendering of the decision by a lower court or, in the same court, he or she has participated in the rendering of the decision challenged with the appeal.

(2) A judge or a lay judge can be excluded from performing the judicial function, apart from the cases listed under subsection (1) of this section, if evidence is submitted which casts doubts on his or her impartiality."

Section 37

"When he or she learns that a reason for exclusion of section 36 subsection (1) of the Act exists, a judge or a lay judge is obliged to stop working on the case and to inform the president of the court, who will name a replacement ..."

Section 38

"(1) Exclusion can be also sought by the parties.

(2) The parties can seek exclusion up to the commencement of the main hearing, and if they only found out the reason for exclusion later, immediately after finding out ...

(4) A party can request the exclusion only of an individually named judge or lay judge acting in the case, or a judge of a court at a higher level of jurisdiction...

(6) When applying for exclusion of a judge, the party has to state why he or she considers that the statutory grounds for exclusion exist.

(7) An application for exclusion based on the same reasons or circumstances as a previously decided application is inadmissible ..."

Section 55

"(1) In the investigation a victim and a private complainant are entitled to specify all relevant facts and propose relevant evidence for discovering a crime and an offender and for determining their compensation claim.

(2) At trial they are entitled to propose evidence, to question the accused, witnesses and experts, to comment on their statements and to submit other proposals.

(3) The victim ... (is) entitled to inspect the case file and other objects used as evidence ...”

Section 97

“(1) On an application by an authorised person, a compensation claim related to a criminal offence is to be decided in criminal proceedings, unless it significantly delays those proceedings.

(2) The victim can submit the compensation claim against an insurance company. “

Section 99

“...

(2) The compensation claim may be submitted in criminal proceedings before they are concluded at first instance. “

Section 102

“(1) The court decides on the compensation claim.

(2) If the court finds the accused guilty, it may award full or partial compensation ...”

Section 379 [Section 353 in the original text of the Act]

“...

(4) New facts and evidence can be raised [or submitted] in an appeal [against a first-instance judgment], but the appellant is obliged to give reasons for not raising them at an earlier stage ...”

Section 418

“(1) Criminal proceedings which ended with a final judgment can be reopened:

...

7) if the European Court of Human Rights has given a judgment finding a violation of the human rights or freedoms.”

34. Section 449 of the Criminal Proceedings Act 2010 (Official Gazette no. 150/2010) provides for the same ground for reopening of criminal proceedings as section 418 the Criminal Proceedings Act 2005.

B. Courts Act 2006 (*Закон за судство*, Official Gazette no. 58/2006)

35. The relevant provisions of the Courts Act read as follows:

Section 7

“Cases arriving at the court for adjudication are distributed among the judges according to their time of arrival at the court, excluding any influence of the president of the court, the judges or the court administration over the distribution ...”

Section 12

“(1) The courts work in principle in specialised court sections.

(2) The specialised court sections are established in line with the type and quantity of work in the court, in the criminal area, juvenile offending, civil and commercial area, labour disputes, and other specific types of disputes from the court’s scope of work.

(3) Specialisation of judges is put in place within the specialised court sections ...”

Section 91

“...

(2) The president of the specialised court section manages the work of the section.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained under Article 6 of the Convention that his case had not been heard by an impartial tribunal, since all the trial court judges lacked the necessary impartiality. He further complained about a violation of the principle of equality of arms. Article 6, in so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

Lack of impartiality

1. Admissibility

(a) The parties’ submissions

37. The Government argued that the applicant had not exhausted all available domestic remedies. Firstly, he had not requested the exclusion of the investigating judge, Judge V.D., or the lay judges acting in the case. Moreover, although it was not possible for him in law to propose that the case be transferred to another competent court, and such a proposal would have been rejected as inadmissible, he could have asked the other competent domestic authorities to propose such a transfer. In addition, the applicant did not raise at the trial stage of the proceedings the fact that Judge C.K. had been Judge M.A.’s clerk, or the fact that Judge M.A. had been the president of the criminal section of the trial court. He had raised these issues in his appeal against the trial court’s judgment and in his extraordinary-review

request, respectively. The applicant should have lodged second exclusion requests based on these issues, as domestic law allowed for repeated exclusion requests based on issues different from those raised in an initial exclusion request. The applicant had raised new issues in connection with Judge C.K.'s alleged bias at every subsequent level of jurisdiction, and not at the trial stage of the proceedings. In his appeal, the applicant had requested that the case be remitted either to a different panel of the trial court or to a different court.

38. The applicant contested those arguments. The fact that he had not specified at the trial that Judge C.K. had been Judge M.A.'s clerk or that Judge M.A. had been the president of the criminal section of the trial court, had not prevented him from raising those arguments in his appeal, which in his opinion, was in line with section 353(4) of the Criminal Proceedings Act (see paragraph 33 above).

(b) The Court's assessment

39. The Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law. However, the rule of exhaustion of domestic remedies requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged. There is no obligation to have recourse to remedies which are inadequate or ineffective (see, among other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 55, ECHR 2009, with further references). The Court furthermore reiterates that in the context of machinery for the protection of human rights, the rule on exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Sejdovic v. Italy* [GC], no. 56581/00, § 44, ECHR 2006-II).

40. Turning to the present case, the Court observes that the applicant complained that all judges of the trial court lacked the requisite impartiality to adjudicate the case, given that the victim in the criminal proceedings (Judge M.A.) was the president of the criminal section of the trial court. He further argued that Judge C.K. had been Judge M.A.'s clerk for five years.

41. The Court notes that in the domestic proceedings the applicant requested that the criminal law judges in the trial court panel be excluded from the trial (see paragraph 17 above), given that the daughter of a judge in the criminal section of that court had died in the traffic accident which was subject to the criminal proceedings at hand. He raised the same complaint in his closing remarks before the trial court (see paragraph 25 above). The Court is therefore satisfied that the substance of the applicant's complaint was adequately raised at the trial stage of the proceedings (see, conversely,

Zahirović v. Croatia, no. 58590/11, § 36, 25 April 2013). In the Court's view, the fact that the applicant did not specify that Judge M.A. was the president of the criminal section of the trial court does not lead to a different conclusion, since, *inter alia*, the president of the trial court, who was competent to decide on the exclusion request, must have been aware of that fact. Similarly, in the Court's view, the fact that the applicant did not raise at the trial stage the fact that Judge C.K. had worked as Judge M.A.'s clerk does not render the applicant's complaint as to the trial court's impartiality inadmissible for non-exhaustion of domestic remedies.

42. As to the remedies referred to by the Government, the Court observes the following. Firstly, the requests for exclusion of Judges C.K. and T.D. on the ground that they had worked with the deceased girl's mother were to no avail, given that the president of the court had dismissed them following the judges' statements that that fact would not influence their adjudication (see paragraph 18 above). There is nothing to indicate that if the applicant had lodged such requests in respect of the investigating judge, Judge V.D. or the lay judges, the president of the court would have decided otherwise (see, *mutatis mutandis*, *Vasilkoski and Others v. the former Yugoslav Republic of Macedonia*, no. 28169/08, § 46, 28 October 2010). Secondly, the applicant unsuccessfully requested that the President of the trial court ask the higher court to assign another first-instance court to decide the case (see paragraph 17 above). As pointed out by the Government, an application in this respect lodged by the applicant would be rejected as inadmissible. As to whether it was possible to make a similar representation to other competent bodies, the Court notes that this remedy is not directly accessible to the accused (see, *mutatis mutandis*, *Erdoğdu v. Turkey*, no. 25723/94, § 34, ECHR 2000-VI). Finally, the Court considers that it would be excessively formalistic to require the applicant to lodge repeated exclusion requests on all possible aspects of his complaint concerning the alleged bias of Judge C.K., such as the fact that she had been Judge M.A.'s clerk or the fact that the latter had been president of the trial court's criminal section.

43. Lastly, the Court notes that the applicant raised the complaint about the alleged lack of impartiality before both the appellate and the Supreme Court (see paragraphs 27 and 30 above), which was also to no avail.

44. In view of these considerations, the Court considers that the Government's non-exhaustion objection should be dismissed.

45. The Court further notes that the 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.

2. *Merits*

(a) **The parties' submissions**

46. The applicant argued that his request for exclusion of all judges in the trial court was based on the fact that Judge M.A. had been the victim in the proceedings. Furthermore, Judge M.A. was the president of the criminal section of the trial court. Judge C.K. had been a clerk at the trial court and had worked with Judge M.A. He further argued that the judges had acted with partiality in order to obtain the support of Judge M.A. and her brother, who had been a member of the State Judicial Council. The Supreme Court had not provided any reasoning as to the arguments he had raised under the Convention Articles.

47. The Government argued that subjective impartiality had not been placed in doubt, as the trial court panel had had no personal interest in the outcome of the case, nor had the applicant provided any evidence of subjective bias on their part. There had been no reasons to doubt the judges' objective impartiality. Judge C.K. had not been a clerk only to Judge M.A.; she had been appointed as a judge more than a year and ten months before the traffic accident; the responsibilities of Judge M.A. as president of the criminal section had been strictly separated from the adjudication of specific cases; she had had no responsibilities in respect of judicial supervision, distribution of cases or career development of the judges in the criminal section. As president of the criminal section she could not have influenced the outcome of the impugned proceedings, nor of the composition of the panel which had acted in them. At the relevant time, Judge V.D. had worked on minor-offence cases and not in the criminal section of the trial court. The relevant statutory provisions provided for adequate mechanisms for judges' protection from undue internal influences. Finally, the fact that the daughter of a judge of the trial court had died in the accident did not justify the applicant's fears as to the court's impartiality.

(b) **The Court's assessment**

(i) *General principles*

48. The Court observes that the relevant Convention principles have been summarised in its judgment in the case of *Morice* (*Morice v. France* [GC], no. 29369/10, §§ 73-78, 23 April 2015, with further references), as follows:

"73. The Court reiterates that impartiality normally denotes the absence of prejudice or bias, and its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects,

its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality...

74. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court ... The personal impartiality of a judge must be presumed until there is proof to the contrary ... As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons...

75. In the vast majority of cases raising impartiality issues the Court has focused on the objective test ... However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test)... Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee ...

76. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified...

77. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings ... It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal ...

78. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done"... What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw..."

(ii) Application of these principles to the present case

49. In the present case, the fear of a lack of impartiality on the part of the judges of the trial court which adjudicated the applicant's case lay in the fact that the mother of the eighteen-year old girl who had died in the traffic accident (Judge M.A.) had been a judge in the trial court and the president of its criminal section. Furthermore, the Court notes that Judge M.A. had victim status (оштетен) in the impugned criminal proceedings, and the trial court had also allowed her compensation claim against the applicant's insurance company.

50. Under the subjective test, the Court reiterates that the personal impartiality of a judge must be presumed until there is proof to the contrary (see paragraph 48 above). In the present case, the Court considers that no evidence has been produced as regards the personal bias on the part of the trial court judges who adjudicated the applicant's case.

51. The case must therefore be examined from the perspective of the objective impartiality test. More specifically, the Court must address the

question whether the applicant's doubts, stemming from the specific circumstances, may be regarded as objectively justified in the circumstances of the case.

52. In this connection, the Court reiterates that the objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings (see *Morice*, cited above; *Fazlı Aslaner v. Turkey*, no. 36073/04, § 41, 4 March 2014; *Hirschhorn v. Romania*, no. 29294/02 26 July 2007, §§ 74-78 and *Daktaras v. Lithuania*, no. 42095/98, § 36, ECHR 2000-X). The Court observes that the Government's arguments mainly address questions relating to the alleged absence of any relevant hierarchical links between the members of the adjudicating panel of the trial court and Judge M.A., as the president of the criminal section of that court. However, the Court does not consider it necessary to decide whether the relevant hierarchical links, if any, objectively justified the applicant's fears as to the trial court's impartiality, for the reasons explained below.

53. The Court observes that at the relevant time there were only four judges, including Judge M.A., in the criminal section of the trial court (see paragraph 7 above). They were all full-time judges (compare and contrast *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, 19 May 2005, concerning a case in which the same person had performed the dual functions of a judge and a practising lawyer). They all had similar functions, although Judge M.A. had particular responsibilities as president of the criminal section (compare and contrast *K. v. Switzerland*, no. 14090/88, 14 December 1988, where there was a distinction between ordinary and substitute judges). It cannot therefore be excluded that personal links had come to exist between the judges in the criminal section of the trial court.

54. In the Court's view, the nature of these personal links is of importance when determining whether the applicant's fears were objectively justified (see, *mutatis mutandis*, *Steck-Risch and Others*, cited above, § 45). In this connection, the Court will firstly assess the nature of the personal link between Judge M.A. and Judge C.K., who presided over the adjudicating panel of the trial court. The Court observes in this respect that Judge M.A. and Judge C.K. had been working together for at least two and a half years (see paragraphs 8 and 9 above). It has not been argued that they were particularly close, or that their relationship went beyond a professional relationship as colleagues (*ibid.*, § 48). However, in this respect the Court considers relevant the fact that Judge C.K. had been working as a clerk with Judge M.A.

55. Most importantly, the Court notes the particular circumstances of the present case, and gives significant weight to what was at stake for Judge M.A. in the impugned proceedings, namely that they concerned a family tragedy in which she had lost her eighteen-year old daughter. As already noted (see paragraph 49 above), Judge M.A., along with other members of

her family, had victim status in the proceedings and lodged a compensation claim against the applicant's insurance company, which was subsequently decided on the merits by the same panel of judges that determined the applicant's guilt (see paragraph 26 above). In these circumstances, the Court considers that the fact that Judge C.K., who was Judge M.A.'s colleague, was presiding over the panel which decided the applicant's guilt in respect of Judge M.A.'s daughter's death in such a tragic accident, prompted objectively justified doubts as to her impartiality. The Court notes in this respect that similar considerations apply in respect of all the judges in the trial court. In this connection it observes that the domestic law did provide for the possibility of transferring a case to another competent court (see sections 31 and 32 of the Criminal Proceedings Act, paragraph 33 above), a practice which according to the applicant, and not refuted by the Government, had been applied in similar circumstances (see paragraphs 25 and 27 above, and, *mutatis mutandis*, *Biagioli v. San Marino* (dec.), no. 8162/13, § 80, 8 July 2014). In the Court's view this is sufficient to conclude that in the present case the applicant's fears as to the impartiality of the trial court could have been considered objectively justified.

56. The Court therefore concludes that there has been a violation of Article 6 § 1 of the Convention in the present case.

II. OTHER ALLEGED VIOLATIONS

57. The applicant further complained under Article 6 of the Convention about a violation of the principle of equality of arms, since the courts refused to admit evidence proposed by him.

58. However, having regard to the facts of the case, the submissions of the parties and its finding of a violation of the applicant's right to a hearing by an impartial tribunal, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 13,347 euros (EUR) in respect of pecuniary damage. This amount corresponded to the income that he would have earned had he not been dismissed from his post as a company manager as a result of his imprisonment. In support he submitted a financial expert report. The applicant also claimed EUR 150,000 or 10,000,000 Macedonian denars (MKD) for non-pecuniary damage and submitted medical certificates concerning his psychological state following the proceedings.

61. The Government contested these claims as excessive and unrelated to the alleged violation of the Convention.

62. As regards the applicant’s claim for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. In particular, it cannot speculate as to what the outcome of the criminal proceedings would have been if the violation of Article 6 § 1 of the Convention had not occurred (see, for example, *Mitrinovski v. the former Yugoslav Republic of Macedonia*, no. 6899/12, § 56, 30 April 2015). The Court therefore rejects this claim.

63. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards him EUR 3,600 under that head, plus any tax that may be chargeable on that amount.

64. Finally, the Court notes that the Criminal Proceedings Act provides for the possibility of proceedings being reopened where the Court concludes in a judgment that a court’s decision or proceedings prior to it were in breach of the fundamental human rights or freedoms of the party (see paragraphs 33 and 34 above).

B. Costs and expenses

65. The applicant also claimed EUR 3,720 for costs and expenses incurred before the domestic courts. These included legal fees for the applicant’s representation in the domestic proceedings, according to the rate scale of the Macedonian Bar, as well as travel expenses for his representative. The applicant further claimed EUR 348 for costs and expenses incurred before the Court. In support he submitted an itemised list of costs.

66. The Government contested these claims.

67. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, § 55, 8 November 2007). Having regard to the fee note submitted by the applicant, the Court finds that only EUR 310 were 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 *Trampevski v. the former Yugoslav Republic of Macedonia*, no. 4570/07, § 60, 10 July 2012). Furthermore, the Court considers it reasonable to award EUR 350 for the proceedings before the Court. It therefore considers that the applicant is entitled to be reimbursed a total of EUR 660 in respect of costs and expenses, plus any tax that may be chargeable to him.

C. Default interest

68. 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 of the Convention as regards the complaint relating to the impartiality of the trial court;
3. *Holds* that it is not necessary to consider the applicant's other complaint under Article 6 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 660 (six hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Ledi Bianku
President