



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

FIFTH SECTION

CASE OF SAKKOU v. CYPRUS

(Application no. 4429/23)

JUDGMENT

Art 6 (criminal) • Fair hearing • Applicant's drug offences conviction decisively based on testimony by accomplice • No promise or undue reward offered to accomplice other than placement in witness protection programme • Domestic courts displaying caution in relying on accomplice testimony • Domestic courts' reliance on independent evidence reinforcing the incriminating testimony • No unfairness

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 July 2025

FINAL

10/10/2025

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

In the case of Sakkou v. Cyprus,

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

Kateřina Šimáčková, *President*,

María Elósegui,

Georgios A. Serghides,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,

Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 4429/23) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Charalambos Sakkou (“the applicant”), on 20 January 2023;

the decision to give notice to the Cypriot Government (“the Government”) of the complaint concerning Article 6 § 1 and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 10 June 2025,

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

INTRODUCTION

1. The case concerns the question whether a criminal trial can be considered to be “fair” within the meaning of Article 6 § 1 of the Convention if it led to a conviction based, to a decisive extent, on the testimony of an accomplice.

THE FACTS

2. The applicant was born in 1979 and is serving a prison sentence in Nicosia. The applicant was represented by Mr C. Paraskevas, a lawyer practising in Nicosia.

3. The Government were represented by their Agent, Mr G. L. Savvides, Attorney General of the Republic of Cyprus.

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

I. THE EVENTS LEADING UP TO THE ARREST OF THE APPLICANT’S ACCOMPLICE

5. Both the applicant and his accomplice, R., were prosecuted and eventually convicted in relation to drug offences.

6. In February 2018 R. bought two kilograms of cannabis worth 12,500 euros (EUR), from the applicant on credit. At a later date he paid EUR 6,000 of that debt back to the applicant. Shortly after that exchange, R. left Cyprus for the United Kingdom, purportedly because he owed money for buying drugs on credit to, *inter alia*, the applicant. He returned in September 2018 but remained isolated in a village to avoid being caught by his creditors. In February 2019 T., a close acquaintance of the applicant, approached R. and proposed that they partner up in a drug trafficking operation. R. accepted and began selling drugs again. When he found out about the partnership between R. and T., the applicant began asking T. about R.'s EUR 6,500 debt to him.

7. T. then suggested that R. pay off his debt to the applicant in kind, namely by offering him a quantity of classified drugs instead of cash, as he did not have that amount of money. The applicant and R. reached an agreement: R. would give the applicant half a kilogram of methylenedioxymethamphetamine (MDMA) and his debt would be reduced to EUR 2,000. T. would broker the transaction between the two by supplying R. with the MDMA which would then be handed to the applicant.

8. On 11 April 2019, while the applicant was in the Netherlands, T. gave the above-mentioned quantity of MDMA to R. so that he could hand it to the applicant. R. hid it somewhere awaiting further instructions from the applicant on how to deliver it to him. The next day, on 12 April 2019, before receiving those instructions, R. was arrested by the police for unrelated drug offences. Specifically, R. was arrested in a case concerning the import of approximately one kilogram of cocaine from Belgium to Cyprus.

II. R.'S CONFESSION AND STATEMENT INCRIMINATING THE APPLICANT

9. R. was placed in detention on remand. While there, a police officer who presented himself as a friend of T. approached him and threatened him "not to speak." R. was frightened by this and informed two police investigators of the Drug Law-Enforcement Unit (*Υπηρεσία Καταπολέμησης Ναρκωτικών* – hereinafter "the YKAN"), G.M. and O.O., about the threat he had received.

10. On 15 April 2019 the investigators transferred R. to a different detention facility. R. informally told G.M. that, if he was offered witness protection and held in a safe detention facility, he might be willing to confess to drug offences that he and others had committed.

11. On 17 April 2019 G.M. and O.O. accompanied R. to the office of the Commander of the YKAN. The four of them had an informal meeting. After the meeting O.O. prepared a detailed information note documenting R.'s confession to his involvement in those offences and his willingness to testify as a prosecution witness about offences committed by his accomplices. It further documented his request to be placed in a witness protection

programme and to receive financial support in order to leave Cyprus once the trials had ended.

12. On 23 April 2019 the Attorney General admitted R. into a witness protection programme, pursuant to section 16(2) of the Witness Protection Law of 2001 (no. 95(I)/2001) (see paragraphs 42-44 below).

13. On the same day R. gave a voluntary written statement to the police. He confessed to the offences for which he had been arrested and gave detailed information regarding other drug exchanges involving, among others, the applicant and T. After giving the statement, R. told the police where he had hidden the MDMA that he had been supposed to deliver to the applicant on 12 April 2019 (see paragraph 8 above).

14. Following R.'s confession, two criminal cases were opened, one of which was against the applicant (no. 20763/19).

III. R.'S CONVICTION AND SENTENCING (No. 14015/19)

15. R. pleaded guilty to the import of approximately one kilogram of cocaine (see paragraph 8 above).

16. On 5 December 2019 the Limassol Assize Court sentenced him to five years' imprisonment, which started to count from 13 April 2019, the date of his arrest and the start of his detention.

17. During the imposition and mitigation of R.'s sentence, the Assize Court took into account the fact that he had cooperated with the police by giving information on offences previously unknown to them and by naming specific individuals (see paragraphs 13-14 above). It also took into account R.'s confession. Lastly, the court considered that R. had been rehabilitated from his addiction to drugs and had shown genuine remorse by breaking free from using and selling drugs.

IV. THE TRIAL AND JUDGMENT CONCERNING THE APPLICANT

A. The trial and witnesses

18. The applicant was charged with, *inter alia*, selling cannabis to R. on credit and agreeing to receive MDMA in lieu of part of R.'s debt (see paragraphs 6-8 above).

19. The trial took place on 10 June 2020. The court heard five witnesses for the prosecution (including R.) and the applicant as the only witness for the defence.

20. The court admitted telecommunication data, submitted by employees of two telecommunication companies, concerning telephone numbers which had been linked with either R., T. or the applicant. That evidence remained unchallenged.

21. G.M. and O.O. also testified for the prosecution, focusing on the events which took place between R.'s arrest and his voluntary statement on 23 April 2019. During their cross-examination, they denied the defence's allegation that they had prepared and directed R. to incriminate the applicant, explaining that it would have been impossible for them to have known the facts recited by R.

22. R. described the applicant as a major drug trafficker for whom many people worked. He explained how the ring used various SIM cards to coordinate the import of drugs. He also testified to the fact that the applicant would call him many times per day using different telephone numbers. R. also spoke of a meeting in a "side-room" at the applicant's house. That part of his testimony was challenged, and it was submitted to him that he had never been to the applicant's house as the room in question was only accessible *via* an external entrance. In return, R. gave a detailed description of that room and insisted that it was connected internally with the rest of the applicant's house.

23. He further gave details on his personal involvement with drugs and on his various unsuccessful attempts to escape from that world. He explained that he had confessed and cooperated with the police because he was afraid – especially after being threatened – and no longer wished to protect the people he had worked with. He described how afraid and unsafe he felt, especially regarding his desire to break free from drug-trafficking rings. He said that he was proud of himself for finding the courage and strength to testify in court against the applicant in his presence. R. emphasised how important it had been for him to receive witness protection so as to feel safe when testifying.

24. During R.'s cross-examination, the applicant's defence lawyer sought to discredit him by alleging that he had fabricated his testimony with the purpose of receiving more favourable treatment from the prosecuting authorities and the domestic courts. R. denied those allegations and reaffirmed that he had given details on drug offences previously unknown to the police, at the risk of worsening his situation, stating that he would not have taken such a risk if it had involved incriminating innocent people. In addition, he stated that he had not implicated the applicant in all those incidents; if he had wanted to fabricate his testimony just to frame the applicant, he could have done so. Most importantly, he had not been treated more favourably as he was also serving a five-year prison sentence.

25. The applicant said that he had not known or ever spoken to R. but admitted that his friend, T., had mentioned him before. He further admitted that the side-room of his house was internally connected with the rest of his house *via* a door leading to the kitchen. However, that door was not used by people other than his family.

B. The judgment of the Assize Court

26. On 29 October 2020 the Limassol Assize Court found the applicant guilty on eight charges.

27. The Assize Court considered that it had been natural for R. to feel comfortable and relieved to confess and testify against the applicant and other drug traffickers only after being admitted to the witness protection programme. It recognised that the law (see paragraphs 42-44 below) prohibited the police from offering rewards to witnesses in exchange for false testimony, but provided for the protection of witnesses who were discouraged from telling the truth out of fear.

28. The Assize Court observed that the applicant himself in his testimony recognised that the side-room of his house was connected through an internal door, in contradiction to what his counsel had submitted during R.'s cross-examination (see paragraphs 22 and 25 above). It considered R.'s rich and explicit knowledge of the interior as an indication that he had been there.

29. The Assize Court pointed out that R.'s submission about the applicant possessing and using many different telephone numbers had been confirmed by the applicant himself. It also noted that R. had shown the police the place where the MDMA had been hidden and found (see paragraph 13 above).

30. The trial court cross-checked the telecommunications data with the version of events as testified by R., finding that the location of the devices as well as other details presented by R. – concerning who used each number and who had been in contact with whom – matched his testimony. Furthermore, it observed that, contrary to the applicant's arguments (see paragraph 25 above), the telecommunications data proved that R. and the applicant did exchange telephone calls on the date prior to R.'s arrest.

31. The Assize Court recognised that R. had been an associate of the applicant and approached his testimony as that of an accomplice. It ruled as follows:

“The testimony of [R.] has been examined with great care, deliberation, caution, scepticism and critical assessment. His testimony remained steadfast and consistent, free from significant contradictions, hesitation or self-contradiction, and was characterised by persuasiveness and clarity. It exhibited logical coherence, forming a solid and unblemished account, enriched with such details that only someone who had genuinely experienced the events first hand could recount in the manner and to the extent that he did.

In the present case, as has already been noted, no improper inducement was offered to this witness in exchange for telling the truth, apart from the fact that he was admitted into the witness protection programme following a decision by the Attorney General. [R.] did not receive any substantive immunity, as he was himself an accused person who, upon his own admission, was sentenced to five years' imprisonment, which he is currently serving.

The witness responded to questions with immediacy and candour – something that may not be evident from the transcript of the trial. He, unequivocally, testified to the truth.

Having carefully examined and assessed everything that [R.] submitted before us – comprehensively and in correlation with the rest of the evidence – we find his testimony credible and are fully convinced that we should place reliance on it for the reasons already explained, as he testified to the truth. There is not the slightest doubt that his account reflected reality.

With full awareness of the inherent risks in accepting the testimony of an accomplice and having exercised due caution at every stage, we emphasise that we have reached a firm conclusion: the nature, quality and persuasiveness of [R.’s] testimony are such that we can, and do, rely on it with confidence, even in the absence of corroborating evidence. Consequently, we do not find it necessary to seek additional supporting testimony.”

32. The Assize Court further held that the police officers’ (G.M. and O.O.) failure to keep minutes during the meeting with the Commander of YKAN was not sufficient to prove that they had encouraged R. to falsely accuse his accomplices. As regards the credibility of G.M. and O.O., the trial court accepted their testimonies (see paragraph 21 above).

33. The Assize Court considered that the applicant was not credible in view of contradictions, inconsistencies, hesitation, evasiveness and exaggeration in his arguments. It pointed out that, while he had denied any knowledge or involvement with drugs, he had given detailed information on the wholesale and retail price of each drug, based on its type and quality, as well as its place of import, method of storage and delivery to Cyprus, indicating thorough knowledge of the subject.

34. On 9 November 2020 Assize Court sentenced the applicant to six years’ imprisonment.

V. SUSPENSION OF R.’S PRISON SENTENCE

35. On 17 December 2020, following a recommendation by the Attorney General, the President of the Republic of Cyprus issued a suspension order concerning the remainder of R.’s prison sentence effective as of 21 December 2020. The suspension order also provided that R. would be transferred abroad under the condition of permanently settling there and he would be allowed to return only when called by the Cypriot authorities to testify as a prosecution witness in pending cases before the domestic courts, during which period he would be granted protection.

36. It appears from the Government’s submissions, which the applicant did not dispute, that R. eventually broke the terms of the suspension order by failing to appear in court to testify against T.

VI. APPEAL PROCEEDINGS (NO. 196/20)

37. The applicant lodged an appeal with the Supreme Court (no. 196/2020). He complained, *inter alia*, that he had not had a fair trial because the Assize Court had erroneously accepted and relied on R.’s

testimony, without looking for corroborating evidence (*ενισχυτική μαρτυρία*). He further argued that the subsequent suspension of R.’s prison sentence had been indicative of a deal between R. and the authorities.

38. On 20 September 2022 the Supreme Court dismissed the appeal on the merits and upheld the applicant’s conviction. It relied on well-established domestic case-law according to which accomplice testimony could be accepted without corroborating evidence when the trial court approached it as such. The Supreme Court noted the caution exercised by the Assize Court (self-caution) and the fact that it had assessed R.’s credibility in a thorough and fair manner. It confirmed that the first-instance court’s assessment had been rigorous and reiterated its findings. The Supreme Court rejected the applicant’s argument that the protection of R. as a prosecution witness had negatively impacted his credibility, concluding that with those principles in mind, the Assize Court had rightly considered that it could rely on R.’s testimony without any corroborating evidence.

39. The Supreme Court did not accept the applicant’s argument that the suspension of R.’s prison sentence in December 2020 proved that he had been granted immunity or had been rewarded. Referring to domestic case-law, as well as differentiating the applicant’s case from *Adamčo v. Slovakia*, (no. 45084/14, 12 November 2019), the Supreme Court explained that the *a posteriori* suspension of a convicted person’s prison sentence did not prove in any way that his testimony had been false. It further explained that the exercise of the President’s powers under Article 53 § 4 of the Constitution did not indicate that the person’s testimony had been tainted and that such powers were not subject to judicial review.

40. Lastly, the Supreme Court referred to evidence before the Assize Court discrediting the applicant’s version of the events *vis-à-vis* evidence which reinforced R.’s credibility.

RELEVANT LEGAL FRAMEWORK

41. The powers of the President to pardon, reduce, suspend or commute the penalties of convicted individuals are set out in Article 53 of the Constitution of the Republic of Cyprus, which, in so far as relevant, provides as follows:

Article 53

“...

4. The President and the Vice President of the Republic may reduce, suspend or commute any penalty imposed by any court within the Republic following the unanimous agreement of the Attorney General of the Republic and the Deputy Attorney General of the Republic.”

42. The Witness Protection Law of 2001 (no. 95(I)/2001) establishes and regulates a scheme for the protection of witnesses and collaborators or

informers to the authorities in the pursuit of justice and the investigation of crimes. Section 16 of the law establishes the “witness and justice collaborators programme” under the control of the Attorney General. The programme is intended for individuals who possess information that is essential to criminal proceedings and who would be at risk if that information was disclosed. Inclusion in the programme requires consent and weighs the risk to the public or harm to third parties against the necessity of ensuring testimony.

43. Section 17 of the law defines the types of protection measures in the programme, which may extend to close family members of the witness. Protection includes guarding, relocation, change of identity or arrangements abroad. The Attorney General decides the appropriate protection based on the risk involved and approves related expenses. Additionally, the Attorney General may issue instructions for the programme’s operation and handle issues related to its implementation.

44. Lastly, section 18 of the law specifies the criteria for deciding whether a person should be included in the programme. These include factors such as the type of risk and whether the protection could pose a public risk, the importance of the testimony, the witness’s ability to adapt to the programme, costs and alternative protection methods. The Attorney General evaluates all relevant factors before deciding.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicant complained that his criminal trial had been unfair because he had been convicted solely on the testimony of an accomplice who had been allegedly rewarded with a suspension of his own sentence. He relied on Article 6 § 1 of the Convention, which reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...”

A. Admissibility

46. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

47. The applicant submitted that he had been convicted exclusively on the basis of accomplice evidence in the absence of adequate and sufficient safeguards against abuse, contrary to the requirement of overall fairness of his criminal trial as provided for by Article 6 § 1 of the Convention. He alleged, despite the lack of any material evidence to that effect, that the domestic authorities had struck a deal with R. which had amounted to plea bargaining. According to the applicant, owing to the lack of documentation on such a deal, it had not been presented to him as such nor had it been discussed during his criminal trial. The applicant argued that the admission of R. into the witness protection programme, the suspension of his sentence by the President and his subsequent removal from Cyprus under a new identity – albeit subsequent to the applicant's conviction – showed that R.'s testimony as a prosecution witness against the applicant had been unreliable.

(b) The Government

48. The Government pointed out the lack of rules set by the Court with regard to the assessment of evidence by domestic courts. They maintained that even though the applicant's conviction had relied to a decisive extent on R.'s testimony, it had been reinforced by other supporting evidence such as the telecommunications data presented by two other prosecution witnesses, as well as the testimony of police investigators O.O. and G.K. The Government submitted that the domestic court had examined R.'s testimony with exceptional thoroughness and had cross-checked it with the rest of the evidence presented by the prosecution, finding no substantial contradictions or inconsistencies. According to the Government, the way in which the trial court had approached and verified the material before it to reach a conclusion on the applicant's guilt had safeguarded the overall fairness of the trial.

49. The Government emphasised that the trial court had exercised caution before relying on the accomplice evidence, showing awareness and reservation towards it. Furthermore, a higher court had diligently examined the applicant's assertion in respect of the accomplice testimony and had rigorously assessed his allegations. They further argued that no deal had been brokered between R. and the prosecution authorities and that no reward had been given or promise made to him. Pointing to the lack of any evidence before the Court documenting any sort of brokered deal, the Government submitted that R.'s decision to testify against the applicant had been triggered by genuine remorse, feelings of regret and the fact that his "tongue had been untied" following his admission to the witness protection programme, which was entirely reasonable.

2. *The Court's assessment*

50. The general principles concerning the fairness of a criminal trial under Article 6 § 1 of the Convention after reliance on accomplice testimony have recently been summarised by the Court in *Souroullas Kay and Zannettos v. Cyprus* (no. 1618/18, §§ 61-62, 26 November 2024, and *Xenofontos and Others v. Cyprus*, nos. 68725/16 and 2 others, §§ 76-79, 25 October 2022).

51. The Court reiterates that Article 6 § 1 of the Convention does not set out any rules on how evidence should be assessed. The Court may interfere in this field only if a domestic court assesses evidence arbitrarily or manifestly unreasonably (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 61, ECHR 2015).

52. The Convention does not prohibit a domestic court from relying on incriminating testimony given by an accomplice, even if that witness has been known to move in criminal circles. However, reliance on the testimony of an accomplice which has been given in exchange for immunity from prosecution may render a trial unfair. This is because such testimony by its very nature is open to manipulation and may be given purely to obtain advantage or for personal revenge (see *Xenofontos and Others v. Cyprus*, cited above, §§ 76-78, and case-law cited therein).

53. In the present case, the Court firstly notes that R. was not granted immunity from prosecution. At the material time, the sole reward granted to him for his testimony was his admission to the witness protection programme, the purpose of which was to protect him against potential threats or dangers to his safety. The Court takes notes of the fact that the Witness Protection Law (see paragraphs 42-44 above) covers in detail the establishment, scope and content of that witness protection programme.

54. The Court further notes that the applicant relied on the alleged lack of any documentary evidence to argue that an undisclosed deal had been brokered between R. and the police to incriminate him, pointing for example, to the absence of minutes of the meeting of 17 April 2019 at the office of the Commander of the YKAN (see paragraph 11 above). The Court cannot ignore, however, that a detailed information note detailing what was discussed at that meeting has been supplied by the Government and that the note is not indicative of any deal, promises or undue rewards in respect of the applicant.

55. The Court further observes that R. confessed and gave a statement about the applicant to the police voluntarily and only after he had been admitted to the witness protection programme, at which point he felt safe enough to do so, as he was protected from various threats (see paragraphs 9 and 12-13 above). Despite R. making certain requests to the authorities before agreeing to testify against the applicant and the other alleged drug offenders, the Court cannot discern that those exchanges had been improper or that they indicate the existence of any sort of promise or undue reward in respect of R.

The Court finds merit in the domestic court's consideration that R. himself was convicted of various drug offences and served one-third of his five-year prison sentence.

56. The Court has no reason to depart from the decision of the Supreme Court not to rely on the Presidential order suspending R.'s remaining prison sentence as evidence of impropriety. As the Supreme Court explained, the decision of the President involved the exercise of discretion granted by the Constitution, rather than the keeping of a promise made to R (see *Xenofontos*, cited above, § 80 and *Souroullas Kay and Zannettos v. Cyprus*, cited above, § 63).

57. Furthermore, in assessing the effect of R.'s testimony on the fairness of the applicant's trial, the Court takes the following factors into account.

58. During his trial before the Assize Court, the applicant was aware of R.'s identity (see *Habran and Dalem v. Belgium*, nos. 43000/11 and 49380/11, § 104, 17 January 2017), the content of R.'s statement and the fact that R. had been placed in a witness protection programme, which at the time was the only type of arrangement or agreement that existed between him and the prosecuting authorities (see, *mutatis mutandis*, *X v. the United Kingdom*, no. 7306/75, Commission decision of 6 October 1976, Decisions and Reports 7). The applicant was able to cross-examine R. and challenge his version of the facts (see *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR-V (extracts)) and was also able to cross-examine G.M. and O.O., the main investigative officers involved (see *Verhoek v. the Netherlands* (dec.), no. 54445/00, 27 January 2004).

59. As regards R.'s testimony, the trial court was fully aware of the dangers inherent in using the evidence presented by an accomplice and approached his testimony carefully, displaying caution accordingly (see *Verhoek*, cited above and *Cornelis*, cited above). The Assize Court took pains to explain in detail why it believed R. (see paragraphs 27-31 above), emphasising the truthfulness and ease with which he had testified and answered questions during the trial (see *Verhoek*, cited above).

60. The Supreme Court, the only appellate court available at the material time, subsequently reviewed the trial court's assessment of R.'s testimony and extensively addressed the question of reliance on accomplice testimony (see *X v. the United Kingdom*, cited above). Furthermore, the applicant's allegations regarding R.'s credibility and truthfulness as a witness were extensively addressed by the domestic courts at both levels of jurisdiction (see *Adamčo*, cited above, § 63).

61. The Court reiterates that its role in the assessment of evidence is limited and in this regard, it relies on the domestic courts' findings (see *Xenofontos*, cited above, § 85, and *Souroullas and Kay*, cited above § 65). While the Assize Court relied on R.'s testimony to the most decisive extent, it also considered the evidence given by G.M. and O.O., as well as the telecommunications data submitted (see paragraph 30 above). It found that

this evidence further supported R.'s testimony and therefore the Court finds that the domestic courts did rely on evidence that corroborated R.'s testimony, as "corroborating evidence" is understood by the Court in its broad sense, and regardless of the absence of corroborating evidence in terms of domestic law, meaning independent evidence reinforcing the incriminating accomplice testimony.

62. In the light of the above considerations, it cannot be said that the Assize Court's reliance on the accomplice testimony rendered the applicant's trial unfair.

63. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention on account of the reliance on accomplice testimony.

Done in English, and notified in writing on 10 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Kateřina Šimáčková
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicant's complaint was that his criminal trial had been unfair, in violation of Article 6 § 1 of the Convention, because he had been convicted solely on the testimony of an accomplice who had allegedly been rewarded with a suspension of his own sentence.

2. First, it is important to set out some pertinent facts which form the basis of my dissenting opinion. The applicant was convicted and on 9 November 2020 was sentenced by the Assize Court to six years' imprisonment in relation to drug offences. His conviction was based on the testimony of R., who was his accomplice. On 17 April 2019 there was a meeting between R. and the Commander of the Drug Law-Enforcement Unit (YKAN) as well as two police officers of YKAN, namely, G.M. and O.O., where R. confessed to his involvement in the offences and declared his willingness to testify as a prosecution witness about offences committed by his accomplices. He also documented his request to be placed in a witness protection programme and to receive financial support in order to leave Cyprus once the trials had ended (see paragraph 11 of the judgment). No minutes were kept of this meeting (paragraph 32 of the judgment). On 23 April 2019, the Attorney General admitted R. into a witness protection programme, and, on the same day, R. gave a voluntarily written statement to the police, confessing to the offences for which he had been arrested, and provided detailed information regarding other drug exchanges involving, among others, the applicant and T. Subsequently, R. pleaded guilty and on 5 December 2019 was sentenced to five years' imprisonment, which started to run from 13 April 2019, the date of his arrest and the beginning of his detention (paragraph 16 of the judgment). On 17 December 2020 following the recommendation of the Attorney General, who is the head of the prosecution service in Cyprus, the President of the Republic of Cyprus issued a suspension order concerning the remainder of R.'s prison sentence, effective as of 21 December 2020 (paragraph 35 of the judgment). The suspension order provided that R. would be transferred abroad under the condition that he settle there permanently. He would be allowed to return only when called by the Cypriot authorities to testify as a prosecution witness in pending cases before the domestic courts, during which period he would be granted protection (paragraph 35 of the judgment). It is to be noted here that R.'s transfer abroad, at the Government's expense, was in fact what he had requested when he had confessed to his involvement in the offences to the Commander of YKAN and the two police officers, G.M. and O.O. of YKAN. However, it appears from the Government's submissions that R. eventually breached the terms of the suspension order by failing to appear in court to testify against T., another accomplice whom he had incriminated in his written statement to the police (paragraph 36 of the judgment). On 20 September 2022, thus when R. had already been released from prison and transferred abroad by and at the

expense of the Cypriot authorities, having obtained the advantage of a presidential suspension of his sentence, the Supreme Court dismissed the applicant's appeal on the merits and upheld his conviction (paragraph 38 of the judgment).

3. The Court, for the reasons stated in the judgment (paragraphs 50-63), held that there had been no violation of Article 6 § 1 of the Convention on account of the reliance on accomplice testimony in the circumstances of the case.

4. I respectfully disagree with the judgment and adhere to the separate opinions I expressed in the cases of *Xenofontos and Others v. Cyprus* (nos. 68725/16 and 2 others, 25 October 2022) and *Souroullas Kay and Zannettos v. Cyprus* (no. 1618/18, 26 November 2024). Although the facts of the aforementioned cases may differ slightly, the issues concerning the right to a fair trial were nevertheless substantially the same. From the above facts of the present case, in the light of all their apparent links and interrelations, it appears to me that R. had some interests of his own to gain when he testified against the applicant. While R.'s interests may not have been as immediate as those of the accomplice witnesses in the *Xenofontos and Others* and *Souroullas Kay and Zannettos* cases – each of whom was granted immunity without being convicted – R. had nonetheless obtained some significant benefits or advantages which could render the applicant's trial unsafe. R. had served only about one quarter of his sentence when it was suspended by an order issued by the President of the Republic, following the recommendation of the Attorney General, the head of the prosecution service in Cyprus. Furthermore, R.'s request to receive financial support to leave Cyprus once the trials had ended was ultimately met. It should be underscored that these advantages were received by the applicant while his appeal before the Supreme Court was pending, and before his conviction became final.

5. The applicant argued that the subsequent suspension of R.'s prison sentence was indicative of a deal between R. and the authorities (paragraph 37 of the judgment). However, the Supreme Court did not accept the applicant's argument that the presidential pardon granted to R. in December 2020 proved that he had been granted immunity or had been rewarded (paragraph 39 of the judgment). With all due respect, since R. made a certain request to the authorities – which was related to his confession – and since this request was eventually met, irrespective of whether there was an actual deal between the authorities and R. or a mere expectation on his part that his request would be granted if he were to give testimony against the applicant, this link cannot be overlooked without making the logical inferences. This observation is strengthened further by taking into consideration that it was a fact admitted by the Government that a condition for the suspension of R.'s penalty was that he was to be transferred abroad and would be required to testify as a prosecution witness in pending cases, such as that of T., another accomplice, before the domestic courts, when

asked to do so by the authorities. The latter condition undoubtedly reflects an agreement or deal between the State and R. regarding his testimony as prosecution witness against T. and other people. It is to be noted that the applicant, R. and T. were all alleged accomplices to the same offences. If there was no problem in principle for the authorities to have a deal with R. for being a prosecution witness against T., there would be also no problem in principle for them to have a deal with R. for being a prosecution witness against the applicant. In the end, it turned out that R., a trustworthy and the most significant witness for the Government and a trustworthy witness in the eyes of the domestic courts, breached the terms of the deal he made with the Government and remained out of prison for three-quarters of his sentence, without keeping his promise to appear and testify as a prosecution witness against other defendants, including T.

6. Sometimes, the links and connections between facts are so strong and self-evident that they speak for themselves. These interrelations create a framework of logic and causality that, once recognised or acknowledged, cannot be easily dismissed without undermining the very foundations of rational inquiry.

7. It is also clear that there was no corroborating evidence in the trial before the Assize Court as such evidence is understood under Cypriot law and at common law in general: an item of evidence other than R.'s testimony which could lead, on its own, to the conviction of the applicant (see about the meaning of “corroborating evidence” – reinforcing (*ενισχυτική*) and not merely supporting (*υποστηρικτική*) evidence – under the Cypriot law, *Souroullas Kay and Zannettos*, cited above, §§ 36 and 58). In my humble submission, in the circumstances of the case, the conviction of the applicant, based solely on the evidence of R. and some supporting evidence – which was not of a corroborating nature in the above sense – was unsafe, problematic and contrary to the concept or notion of fairness under Article 6 § 1 of the Convention. It is clear from paragraphs 30 and 61 of the judgment that all the other evidence available before the domestic courts was related in one way or another to the evidence given by R. and that there was no independent corroborating evidence.

8. There are two views or approaches as to the meaning of procedural fairness or “overall fairness” of a trial: on the one hand, what I may call the “qualified procedural fairness view”, which is followed by the current case-law of the Court and allows for a balancing exercise, and on the other, what I may describe as the “principled view of procedural fairness” (the “normative view”), which was to be found in some of the Court’s case-law in the past and is also supported by substantial academic literature. My preference is for the latter view, which I follow in this opinion. My preferred view or approach does not permit balancing against other interests or considerations, since it regards each guarantee under Article 6 (save for some expressed exceptions in Article 6 § 1) as an independent guarantee and as

having an autonomous process value that must be respected with full normative force (see, *inter alia*, paragraph 7 of my dissenting opinion in *Souroullas Kay and Zannettos*, cited above; and Eva Brems, “The ‘logics’ of procedural-type review by the European Court of Human Rights”, in Janneke Gerards and Eva Brems (eds), *Procedural Review in European Fundamental Rights Cases* (Cambridge University Press, 2017), 17, at pp. 27-28).

9. In my separate opinions in the above-cited cases of *Xenofontos and Others* (paragraphs 29-32) and *Souroullas Kay and Zannettos* (paragraphs 13-14), I proposed that the prohibition in, or preclusion from, a criminal trial of fundamental flaws which inherently taint and contaminate the whole trial (as do the fundamental flaws which emanate from the evidence of a key witness, in the present case R.), is an implicit or implied specific guarantee of a fair trial which springs from the general right to a fair trial under Article 6 § 1 of the Convention. To put it otherwise, there is a sub-right or an implied specific guarantee in Article 6 § 1 that the right to a fair criminal trial of a person should be free from any fundamental flaws which may contaminate the procedure as a whole. An example of such fundamental flaws is when a person is convicted on the sole or decisive testimony of an immunised accomplice or, as in the present case, of an accomplice who was rewarded with a suspension of his prison sentence while the applicant’s appeal was still pending and who also benefited from being transferred abroad at the Government’s expense, after the suspension of his sentence. Hence, the prohibition on convicting a person on such evidence is, in my humble view, an aspect or sub-guarantee of the implied specific guarantee or sub-right in question. The failure to secure this implied guarantee infects the whole procedure and extinguishes the fairness of a trial. The concept of integrity in criminal proceedings should be viewed as a continuous and inseparable whole, such that any tainted evidence will contaminate the entire procedure. Therefore, a court in that situation should not be in a position to justify the conviction and punishment of the accused person.

10. In my deferential submission, the most compatible approach to the concept of a fair trial under Article 6 would be that a criminal trial can under no circumstances, and irrespective of the existence of any “safeguards”, be considered fair if a person is convicted on the basis of sole or decisive reliance on the testimony of an immunised accomplice or an accomplice such as the one in the present case who stood to gain some significant benefits. Because this flaw is intrinsic and so fundamental to the procedure, the whole trial and any balancing test within it will be tainted completely by the flaw, and no “safeguards” will be able to counterbalance it. On the contrary, it would be futile and pointless to seek to counterbalance, by any factor or “safeguard”, a fundamental flaw which pervades the whole trial to such an extent that it is contaminated completely. As I have explained in my separate opinions in the two cases against Cyprus mentioned above, my preferred view is compatible with the literal and purposive meaning of the concept of “the overall fairness

of the trial” under Article 6, and, of course, it is compatible with the principle of effectiveness both as a norm of international law and as a method of interpretation.

11. However, even if I were to adhere to the “qualified procedural fairness view”, which is followed by the current case-law of the Court, I would again arrive at the conclusion of a violation of Article 6 § 1 of the Convention, since there was no corroborating evidence as understood by Cypriot law, and no other sufficient safeguards to ensure that the trial was safe and fair.

12. The view that I have expressed above is conveyed with the utmost respect for the Court’s judgment and its current case-law. My sincere aim is not only to present my views with integrity and conviction, but also to engage thoughtfully with the Court’s approach, in the hope of making a constructive contribution to the shaping and application of legal principles, particularly in relation to the fairness of the trial.

13. The applicant sought compensation for non-pecuniary damage together with costs and expenses. I would award him an amount for non-pecuniary damage and another for costs and expenses; however, there is no need for me to determine these amounts as I am in the minority.