



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

FIFTH SECTION

CASE OF FAJSTAVR v. THE CZECH REPUBLIC

(Application no. 48303/21)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Applicant's drug-trafficking conviction decisively based on the testimony of co accused, having been granted the status of "cooperating accused", who eventually benefitted from a more lenient sentence, not rendering trial unfair

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 October 2025

FINAL

16/01/2026

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

In the case of Fajstavr v. the Czech Republic,

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

María Elósegui, *President*,
Georgios A. Serghides,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Sébastien Biancheri, *judges*,
Pavel Simon, *ad hoc judge*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 48303/21) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Aleš Fajstavr (“the applicant”), on 23 September 2021;

the decision to give notice of the application to the Czech Government (“the Government”);

the parties’ observations;

the decision of the President of the Section to appoint Mr P. Simon to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Ms K. Šimáčková, the judge elected in respect of the Czech Republic, having withdrawn from sitting in the case (Rule 28 § 3);

Having deliberated in private on 16 September 2025,

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

INTRODUCTION

1. The application concerns the applicant’s criminal conviction for drug trafficking, which was based to a decisive extent on the testimony of the applicant’s co-accused, who had been granted the status of “cooperating accused”. It raises issues under Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1957 and lives in Jihlava. He was represented by Mr F. Seifert, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

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

I. PRE-TRIAL PROCEEDINGS

5. On 13 July 2016 the police brought criminal charges against N.M. for drug trafficking; on the same day, she largely confessed to the charges. Her ex-partner, J.J., also provided a statement to the police in which he mentioned that on one occasion the applicant had been present when O.K. had given N.M. drugs to transport to Switzerland.

6. On 20 July 2016, when N.M. was questioned again, she supplemented her previous statement by saying that her second trip to Switzerland in April 2015 had been organised by both O.K. and the applicant, who had come to her flat, packaged the drugs and put them in a suitcase before driving her to Prague to take the bus; on her return from Switzerland, they had waited for her in Prague and collected money from her. O.K. and the applicant had also allegedly accompanied her to the Prague bus station on her third trip to Switzerland in June 2015. On 15 September 2016 she reiterated that, in her opinion, both O.K. and the applicant had been involved in the drug trafficking, since they had always made arrangements together, but that she did not know more about their specific roles.

At the end of those interviews, N.M. asked to be recognised as a “cooperating accused” within the meaning of Article 178a § 1 of the Code of Criminal Procedure (hereinafter “the CCP”).

7. On 20 November 2016 the police brought criminal charges against N.M., O.K. and the applicant for the particularly serious offence of manufacturing and trafficking illegal drugs, committed within an organised group between January and June 2015.

8. The following day the applicant was appointed a lawyer, his case warranting mandatory legal representation.

9. On 22 November 2016 the applicant was questioned in the presence of his lawyer and stated that he had known N.M. since he had once accompanied her and O.K. to the bus station in Prague and had been to her flat several times, but that he did not remember why.

10. On 16 December 2016 N.M. was questioned by the prosecutor, as a cooperating accused, in the presence of all the accused’s lawyers, including the applicant’s. The latter asked her detailed questions about both her history of drug addiction and the applicant’s alleged role in the criminal activity. The applicant’s lawyer did not attend N.M.’s interview on 20 January 2017 and did not ask her any questions during her subsequent interview on 14 February 2017.

11. On 19 January 2017 the police took a new statement from N.M.’s ex-partner, J.J., so as to allow the accused’s lawyers to ask him questions. However, J.J. only referred to his initial statement and refused to make any further comments.

12. On 18 February 2017 a psychiatric expert, who had been commissioned by the police, delivered an expert report on N.M.’s mental

state. According to the report, N.M.'s character was disharmoniously structured but she did not suffer from any mental illness; she was able to understand the purpose of criminal proceedings and to fully participate in them. However, given that she had been taking drugs since she was 14 years old, he recommended an outpatient drug addiction treatment.

13. On 6 October 2017 the applicant, O.K., N.M. and J.J. were formally indicted by the prosecutor; N.M. was designated as a cooperating accused.

II. CRIMINAL TRIAL

14. The applicant and his lawyer attended the hearings held before the Ústí and Labem Regional Court on 26 April 2018, 27 June 2018, 23 November 2018, 15 January 2019 and 28 August 2019.

The applicant denied engaging in the criminal activity in question, claiming that he had an alibi for the dates of both of N.M.'s trips to Switzerland in which he had allegedly been involved according to the indictment. Concerning the trip on 14-16 April 2015, he submitted a medical certificate stating that he had been hospitalised from 15 to 18 April 2015. As to the second trip on 12-14 June 2015, he asserted that during that period he had transported cars to Belgium, which he intended to prove by written evidence (namely documents pertaining to international carriage) and the hearing of witnesses J.V. and H.K. He further argued that N.M. had testified against him because he had insulted her in the past and because she was trying to obtain a reduced sentence; moreover, her reliability was doubtful, given that she had been a long-term drug addict.

N.M., designated as a cooperating accused, stated that she had told the truth and confirmed her pre-trial statement which had been read out. She also responded to questions asked by the prosecutor, the court and her co-accused's lawyers and admitted that she did not remember whether the applicant had been to Prague with her one time or two times.

The court further heard J.V., a witness for the applicant, who stated that, according to the relevant carriage document, he and the applicant had loaded a car to be sold abroad, on 11 June 2015, and had remitted it to the buyer in Belgium on 13 June 2015; he could not, however, remember when exactly they had left together for Belgium, only that on their return journey they had spent one night at H.K.'s home in Belgium and had returned on 15 June 2015.

A request by the applicant to hear H.K. was refused by the court without written reasoning.

In his closing speech of 28 August 2019, the prosecutor admitted that N.M. was not a person of integrity but emphasised that she had incriminated herself in respect of a more serious offence (see paragraphs 5-7 above), had described the activities of the whole group and had shed light on the criminal activity under investigation, and that her statement had been supported by other pieces of evidence, in particular by statements of six other persons related to the acts

committed by O.K. In his view she had satisfied the conditions set out in the CCP to be granted the status of cooperating accused and recommended that she receive a length of sentence below the lower statutory range (three years were proposed).

15. On 26 September 2019 the Regional Court found the applicant, O.K. and N.M. guilty of the particularly serious crime of manufacturing and trafficking illegal drugs committed within an organised group. The applicant was sentenced to ten years in prison and N.M. was given a three-year prison sentence. The court based itself on the statements of N.M., given both at the pre-trial stage and at trial, which it considered reliable since they described the actions of all members of the group in a logical and consistent way and were corroborated by other pieces of evidence, namely the statement of her ex-partner given on 13 July 2016, telephone recordings, a search of O.K.'s home and information provided by the bus company and the Swiss authorities. Referring to, *inter alia*, the expert report (see paragraph 12 above), the court found no reasons to consider N.M., designated as a cooperating accused, unreliable and it observed that there had been no major conflict between her and the applicant in the past, contrary to what the latter had claimed, which might have driven N.M. to falsely incriminate him. It also considered untenable the applicant's alibi, holding that his hospitalisation had not prevented him from being present when N.M. had left for Switzerland on 14 April 2015, and that his assertion that he and J.V. had left on 10 June 2015 had been refuted by J.V., according to whom the cars had been loaded only on 11 June 2015 and who had not remembered when exactly they had left.

16. The applicant appealed against that decision to the Prague High Court, which dismissed his appeal on 13 March 2020 following a public hearing. It considered that the Regional Court had conducted a comprehensive examination of the evidence, pointing out that the hearing of the defence witness H.K. had been considered redundant in view of the evidence taken up to that point. Indeed, even if H.K. had been heard and had confirmed that the applicant had spent the night of 14-15 June 2015 at his home, this would not have refuted N.M.'s statement that the applicant had accompanied her to Prague on 12 June 2015.

17. On 25 November 2020 the Supreme Court dismissed an appeal on points of law lodged by the applicant, endorsing the lower courts' findings. As to the fact that the witness, H.K., had not been heard, it observed that that did not amount to "omitted evidence" since the proposal to hear him had been considered and dismissed orally on the basis of adequate, albeit brief, grounds.

18. Subsequently, the applicant lodged a constitutional appeal, which the Constitutional Court dismissed as manifestly ill-founded on 24 March 2021 (decision no. II. ÚS 617/21). In the Constitutional Court's view, the applicant only disagreed with the interpretation of law by the lower courts and with

their guilty verdict; however, all his concerns and arguments had been duly addressed.

19. On 7 September 2021 the applicant was arrested in Germany, following from a European arrest warrant issued by the Regional Court. He was transferred to the Czech Republic on 3 November 2021 to serve his prison sentence.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CRIMINAL PROCEDURE (LAW No. 141/1961)

20. The concept of cooperating accused was introduced into the Czech Code of Criminal Procedure, with effect as of 1 January 2010, with a view to facilitating investigations and clarification of particularly serious crimes. It is governed by Article 178a.

21. Article 178a § 1 provides that in proceedings concerning an offence, the public prosecutor may designate in the indictment an accused as cooperating if he or she:

(a) reports to the prosecutor facts that are likely to significantly contribute to the clarification of an offence committed by members of organised groups and undertakes to provide a comprehensive and truthful statement about those facts both in pre-trial proceedings and at trial;

(b) confesses to the crime for which he or she is being prosecuted and there is no reasonable doubt that that confession is free, serious and definitive;

(c) declares that he or she agrees to be designated as a cooperating accused.

In addition, the prosecutor must consider such designation necessary, given the nature of the criminal offence which the accused has undertaken to clarify, also taking into account the offence referred to in the accused's confession, the character of the accused and the circumstances of the case, especially whether and how the accused participated in committing the offence which he or she has undertaken to clarify and what consequences were caused by his or her actions.

22. Under Article 178a § 2, if the cooperating accused has not committed a crime that is more serious than the crime he or she helped to clarify, if he or she did not participate as an organiser or instigator in the crime he or she helped to clarify, if he or she did not intentionally cause serious bodily harm or death, and if there are no grounds for an extraordinary increase of the prison sentence, the prosecutor may, under certain conditions, propose in the indictment that the punishment be waived.

23. Pursuant to Article 178a § 3, before the prosecutor designates the accused as cooperating, he or she must question the accused, in particular about the content of the information provided and about his or her confession. The accused will also be asked whether he or she is aware of the consequences of his or her actions. Prior to the examination of the accused,

the prosecutor must inform the accused of his or her rights, the substance of being designated as a cooperating accused, the obligation to maintain his or her confession and comply with the obligations set out in paragraph 1 of Article 178a, and must inform the accused of the fact that if he or she violates his or her obligations in the pre-trial proceedings or at trial, he or she will no longer be regarded as a cooperating accused.

II. CRIMINAL CODE (LAW No. 40/2009), AS IN FORCE AT THE MATERIAL TIME

24. Article 39 § 1 provided that, in determining the type and length of a sentence, the court had to take into account, *inter alia*, whether a perpetrator designated as a cooperating accused made a significant contribution to the clarification of a crime committed by members of an organised group.

25. Under Article 41m, the court had to consider a mitigating circumstance, *inter alia*, the fact that the perpetrator had contributed, in particular as a cooperating accused, to the clarification of a criminal activity committed by members of an organised group.

26. Article 46 § 2 allowed the court to refrain from punishing a perpetrator designated as a cooperating accused if the conditions laid down in Article 178a §§ 1 and 2 of the CCP had been satisfied and if the cooperating accused had provided a comprehensive and truthful statement, both in the pre-trial proceedings and at trial, about facts that were likely to contribute significantly to the clarification of a crime committed by members of an organised group.

27. Under Article 58 § 4, the court could reduce a prison sentence imposed on a perpetrator designated as a cooperating accused to a length below the lower limit of the statutory range if the conditions laid down in Article 178a § 1 of the CCP had been satisfied and if the cooperating accused had provided a comprehensive and truthful statement about the relevant facts. In doing so, the court had to take into account the nature of the offence referred to in the cooperating accused's confession in comparison with the offence committed by members of the organised group whose clarification he or she had contributed to, the significance of that offence, the character of the perpetrator and the circumstances of the case, in particular whether and how he or she had participated in it and which, if any, consequences his or her actions had caused.

III. DOMESTIC COURT PRACTICE

28. The Supreme Court stated in its decision no. 7 Tdo 1315/2012 of 12 December 2012 that the institution of cooperating accused was viewed as an effective tool in combatting serious organised crime and as a legitimate means of gathering evidence. It emphasised that, according to the Court's

case-law, a statement of a cooperating accused could be used, provided that such evidence and the motivation behind it had been subjected to a careful assessment. Thus, there was always a need to consider the equivocal nature of that kind of statement and the risk of it being self-serving. Also, such evidence could not stand alone and had to be assessed critically.

29. In decision no. 8 Tdo 661/2015 of 17 September 2015 the Supreme Court held that the position of a prosecutor who designated an accused as cooperating was not decisive or binding for the court, which had to consider all the circumstances relevant to the application of Article 58 § 4 of the Criminal Code in an autonomous and independent manner.

30. The Constitutional Court stated in its decision no. III. ÚS 859/13 of 13 March 2014 that the application of the institution of cooperating accused must be subject to the most stringent requirements and the process of assessing the credibility of a cooperating accused's statement must be exceptionally thorough. In particular, it considered it necessary to examine his or her motives for cooperating and the compatibility of his or her statement with the other evidence gathered.

31. On 7 August 2018 the Constitutional Court held, in judgment no. II. ÚS 3525/16, that by accepting the status of cooperating accused the accused waived his or her right to refuse to testify, implying the privilege not to worsen his or her procedural situation, which was motivated by the expected, albeit discretionary, benefit of an extraordinary reduction of his or her prison sentence.

32. In decision no. IV. ÚS 3816/18 of 29 January 2019 the Constitutional Court held that the regulation of the institution of the cooperating accused was meant to be optional, with a very wide range of discretion on the part of the prosecutor, and without any direct (compulsory) consequences for the material rights of the accused persons; those could only occur after the court had taken account of all the relevant circumstances.

33. On 28 August 2019 the Constitutional Court confirmed, in decision no. III. ÚS 3193/18, that even if the prosecutor designated an accused as cooperating in the indictment, that position could not be binding on the court hearing the case, which had to ascertain that the conditions set out in Article 178a § 1 of the CCP had been satisfied.

34. In decision no. I. ÚS 2038/20 of 16 September 2020 the Constitutional Court held that while the findings of a criminal court could be based solely on the statement of a cooperating accused, the court had to explain, in a sufficient and logical manner, why it considered that statement credible. In the case at hand, the main reason for concluding that the statement of a cooperating accused was credible was the fact that it was consistent with other pieces of evidence.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant complained under Article 6 §§ 1 and 2 of the Convention that his criminal conviction had been based on unreliable statements of his co-accused, who had cooperated with the criminal authorities in exchange for a reduction of her sentence.

The Court, which is the master of the characterisation to be given in law to the facts of the case, will examine the complaint from the standpoint of Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

36. The Court notes that the application 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

37. The applicant asserted that his conviction had been based almost exclusively on the statement given by the cooperating accused, N.M. Moreover, her allegations about her second and third trips to Switzerland, in which he had allegedly been involved, had been inaccurate and contained contradictions, which had made them unreliable. Also, her statement had been significantly influenced by what she had been told by the prosecution or had read in the file. However, instead of being particularly cautious, the courts had downplayed or ignored those deficiencies and considered unreliable any evidence in his favour which had contradicted N.M.'s statement, such as the witness statement by J.V. They had also refused to hear H.K., who could have corroborated J.V.'s statement.

38. The applicant further argued that, contrary to the Government's allegations (see paragraph 42 below), N.M.'s testimony had not been corroborated either by J.J.'s statement, which had not implicated him in the offence, or by any other piece of evidence. He further argued that he had not been able to attend J.J.'s interview of 13 July 2016, as he had not yet been charged at that time, while on 19 January 2017 J.J. had refused to make any further comments (see paragraph 11 above). As to the other evidentiary material, such as telephone recordings and information provided by the bus company, they had not proved that he had played any role in N.M.'s trips to Switzerland or that he had himself exported or sold any illegal drugs.

39. As to the institution of cooperating accused as regulated by Czech law, the applicant submitted that it was devoid of virtually any guarantees. In pre-trial proceedings, it was at the prosecutor's discretion whether an accused would be designated as cooperating within the meaning of Article 178a of the CCP, and there was no formalised agreement on the benefits for the accused. Yet, in the applicant's view, the Court's case-law presupposed the existence of a transparent agreement between the cooperating accused and the prosecutor, whose terms could be reviewed by a court. The fact that under Czech law the cooperating accused could only expect a discretionary benefit, which was to be determined by the court (see paragraph 43 below), confirmed in his view the problematic nature of that institution. In the present case, the applicant disagreed that the use of the institution of cooperating accused had been subjected to proper judicial review, emphasising that the Regional Court had given N.M. the same sentence as that proposed by the prosecutor, that is, a three-year prison sentence. Given that she had faced a sentence of between ten and eighteen years, the advantage she had obtained as a cooperating accused had thus been considerable.

40. Moreover, the courts had failed to explain how the conditions set out in Article 178a § 1 of the CCP and Article 58 § 4 of the Criminal Code had been met. In this connection, the applicant emphasised that N.M. had given her key statement during the interview on 20 July 2016, which he or his lawyer could not attend, but she had not repeated it in full at any later occasion or, in particular, at trial. Lastly, the courts had not properly dealt with the issue of possible motives on N.M.'s part to incriminate him.

41. Referring to the general principles set out in *Xenofontos and Others v. Cyprus* (nos. 8725/16, 74339/16 and 74359/16, 25 October 2022), the Government submitted that the present case had to be distinguished from those in which the Court had found a violation of Article 6 (see *Adamčo v. Slovakia*, no. 45084/14, § 71, 12 November 2019, and *Erik Adamčo v. Slovakia*, no. 19990/20, § 76, 1 June 2023), in which the cooperating accused had practically been granted immunity. In their view, it was rather similar to cases which had been dismissed as manifestly ill-founded (they referred to *Shiman v. Romania* (dec.), no. 12512/07, 2 June 2015, and *Czerski v. Poland* (dec.) [Committee], no. 20170/14, 30 January 2024) and in which sufficient counterbalancing factors had compensated for the fact that the statement of the cooperating accused had constituted the main evidence against the applicants. They also emphasised the wide margin of appreciation enjoyed by the State in the fight against organised crime, especially in the field of international drug trafficking.

42. The Government argued that, while the applicant's conviction had rested significantly on the statement of the cooperating accused, N.M., which had been corroborated by the pre-trial statement of her ex-partner, J.J. (see paragraph 5 above), it had also been supported by a substantial amount of objective evidence, such as telephone recordings and information provided

by the bus company (see paragraph 15 above). In their view, the proceedings had been accompanied by appropriate procedural safeguards. In particular, the applicant had been assisted by a lawyer, he had been aware of N.M.'s identity and informed that she had been designated as a cooperating accused, and his lawyer had been allowed to attend all the examinations of N.M. during the pre-trial proceedings and ask her questions at the trial hearing. The applicant had also used the opportunity to put forward his account of the events and to challenge N.M.'s credibility, to which the court had duly responded; moreover, N.M.'s mental state had been subjected to an expert examination (see paragraph 12 above). As to the applicant's argument that the key incriminating statement had been made by N.M. in the pre-trial proceedings, the Government submitted that such fact was not sufficient to render the applicant's conviction unfair (they referred again to *Shiman*, cited above).

43. The Government further argued that the domestic courts had subjected the applicant's case to an appropriate degree of scrutiny. They asserted that there had been no formalised agreement between N.M. and the prosecutor and that, contrary to the applicant's allegations (see paragraph 39 above), such an agreement was not required by the Court's case-law (they referred, in this respect, to *Souroullas Kay and Zannettos v. Cyprus*, no. 1618/18, 26 November 2024). Under the applicable legislation, it had been up to the court to assess whether N.M. could be granted the status of cooperating accused and given a reduction of her sentence, which had amounted to a discretionary benefit (see paragraph 31 above). The Regional Court had also duly examined and explained why it had considered N.M.'s statement credible, pointing out that it had been sufficiently detailed, consistent and logical and that there had been no reasons for her to falsely incriminate the applicant (see paragraph 15 *in fine*). In the Government's view, had N.M. been motivated solely by a desire to gain benefits from her procedural status of cooperating accused, she would not have incriminated herself in respect of a more serious offence, as pointed out by the prosecutor (see paragraph 14 above). Lastly, the Government emphasised that N.M. had not received practical immunity or impunity, but only a reduction of her prison sentence, which was a benefit considerably less significant than that granted to the cooperating accused in *Adamčo* and *Erik Adamčo* (both cited above).

2. The Court's assessment

(a) General principles

44. 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). It also reiterates in this context that the admissibility of

evidence is a matter for regulation by national law and the national courts (see, among many other authorities, *Perić v. Croatia*, no. 34499/06, § 17, 27 March 2008). The Court's only concern is to examine whether the proceedings were conducted fairly and, in particular, whether the defendant's rights were not unacceptably restricted and that he or she remained able to participate effectively in the proceedings (see, for example, *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A, and *Sievert v. Germany*, no. 29881/07, § 62, 19 July 2012).

45. The use of statements made by witnesses in exchange for immunity or other advantages is an important tool in the domestic authorities' fight against serious crime. However, the use of such statements may put into question the fairness of the proceedings against the accused and is capable of raising delicate issues as, by their very nature, such statements are open to manipulation and may be made purely in order to obtain the advantages offered in exchange, or for personal revenge (see *Xenofontos and Others*, §§ 76-78, and *Erik Adamčo*, § 59, both cited above). The sometimes ambiguous nature of such statements and the risk that a person may be accused and tried on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated (see *Habran and Dalem v. Belgium*, nos. 43000/11 and 49380/11, § 100, 17 January 2017). However, the use of these kinds of statements does not in itself suffice to render the proceedings unfair. This depends on the particular circumstances in each case (see *Shiman*, cited above, § 34, and *Oddone and Pecci v. San Marino*, nos. 26581/17 and 31024/17, § 106, 17 October 2019).

46. When assessing the effect of incriminating testimony given by an accomplice on the fairness of proceedings as a whole, the Court has taken into account, *inter alia*, whether:

- the defence knew the witness's identity;
- the defence knew about the existence of an arrangement with the prosecution;
- a domestic court reviewed the arrangement;
- the domestic court considered all the possible advantages received by the witness;
- the arrangement was discussed at the trial;
- the defence had the opportunity to test the evidence of the witness;
- the defence had the opportunity to test the evidence of the members of the prosecution team involved;
- the domestic court was aware of the pitfalls of relying on the evidence of an accomplice;
- the domestic court approached the testimony cautiously;
- the domestic court explained in detail why it believed the witness;
- there was untainted corroborating evidence;
- an appeal court reviewed the trial court's findings in respect of the witness; and

– the question was addressed by all the courts dealing with the various appeals (see *Xenofontos and Others*, cited above, § 79, with further references).

(b) Application of the general principles to the present case

47. The Court notes at the outset that, in the present case, it is not concerned with testimony that was given by a witness whose identity was concealed from the accused or who was absent at trial. Indeed, the incriminating statement against the applicant was made by his co-accused, N.M., whose identity was known to the defence and who was granted the status of cooperating accused within the meaning of Article 178a of the Czech Code of Criminal Procedure. The applicant and the domestic courts were aware of that arrangement from the very outset because, *inter alia*, N.M. was designated as such in the prosecutor’s indictment (see paragraphs 10 and 13 above).

48. To the extent that the applicant challenged the domestic regulation of the institution of cooperating accused and the absence of any formalised agreement between that person and the prosecutor (see paragraph 39 above), the Court observes that it is not its role to review the legislation *in abstracto*, but to examine whether the proceedings against the applicant were fair as a whole.

49. The Court further observes that during the investigation N.M. was questioned at least three times after the applicant had been charged and that the applicant’s lawyer was allowed to participate in the interviews (see paragraph 10 above). The first-instance court also came into direct contact with N.M., who was present when her statements from the pre-trial proceedings were read out, confirmed them in their entirety and answered questions posed to her (see paragraph 14 above). It is thus undisputable that, in the course of the trial, the applicant and his lawyer were able to observe N.M.’s demeanour under questioning, had an opportunity to challenge the latter’s credibility and the accuracy of her testimony and to contradict her account of the circumstances of the case. Indeed, the applicant tried to discredit the statement of N.M. regarding her two trips to Switzerland in which he had allegedly been involved, but his alibi was considered untenable by the courts (see paragraphs 15 and 16 above).

50. It appears from the case file that the first-instance court gave reasons as to why it considered irrelevant the inconsistencies pointed out by the defence, considering that N.M.’s statements made at the pre-trial stage and at trial were consistent (see paragraph 15 above). In this connection, the Court finds it important to note that N.M. incriminated the applicant during her interview on 20 July 2016 (see paragraph 6 above) and not in return for any benefit (compare *Adamčo*, §§ 58 and 65, and *Souroullas Kay and Zannettos*, § 12, both cited above). It also emphasises that she was not granted immunity; indeed, after having first been prosecuted for simple drug trafficking

(see paragraph 5 above), she was charged, following her further statements, with a more serious offence (see paragraphs 6 and 7 above) which carried a punishment of ten years' imprisonment or more. She was eventually sentenced to three years' imprisonment, that is to say that the extent of the benefit which she was granted was determined by the court, as provided for in the relevant provisions of the Criminal Code as in force at the material time (see paragraphs 24-27 above).

51. It is true that N.M.'s statement amounted to key incriminating evidence against the applicant. As to whether untainted corroborating evidence existed, the Court notes that according to the domestic courts, N.M.'s statement was – with regard to the applicant – corroborated in general terms by the testimony of J.J., who stated that the applicant had been present in N.M.'s flat when the drugs were being packed. The applicant himself admitted that he had been to N.M.'s flat and had accompanied her to the bus station in Prague (see paragraph 9 above). Furthermore, N.M.'s statement with regard to the other members of the group, namely O.K., was considered corroborated by other pieces of evidence, including telephone recordings, a search of O.K.'s home and information provided by the bus company, which led the domestic court – that had the benefit of direct impression of her conduct under questioning – to consider her testimony reliable (see paragraph 15 above).

52. Furthermore, the courts examined N.M.'s testimony not only by reference to other evidence, but also in the light of the psychiatric expert report on her mental state. They also considered her possible motivation to harm the applicant, addressing the latter's complaints and objections in that regard, but found that there were no reasons to consider that there had been any major animosity between them which might have led N.M. to falsely incriminate him (see paragraph 15 *in fine*). Thus, although the courts may be criticised for not having clearly considered the impact of that testimony on the fairness of the trial, it cannot be said that they were unaware of the reduced evidentiary value thereof or that they did not examine its reliability in a careful and critical manner.

53. Lastly, as regards the assessment of the admitted evidence, the Court reiterates that Article 6 of the Convention does not lay down any rules on the way evidence should be assessed, which are therefore primarily matters for regulation by national law and national courts. It is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they might have infringed rights and freedoms protected by the Convention (see paragraph 44 above). In the present case, the Court observes that the domestic courts had before them additional circumstantial evidence supporting N.M.'s statements and finds that there is nothing to establish that the assessment of the evidence by them was arbitrary. It reiterates in this context that witness statements submitted in the course of a trial do not have to cover all the elements of the charges at issue but that

some of them can be derived by means of logical reasoning or other material submitted to the acting judge (see *Sievert*, cited above, § 66).

54. In view of the circumstances above, it cannot be said that the applicant's conviction was based on evidence in respect of which he was not, or not sufficiently able to exercise his defence rights under Article 6 § 1 of the Convention, or that the overall fairness of the proceedings was compromised as a result of the courts' reliance on the statement given by the applicant's co-accused.

55. 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.

Done in English, and notified in writing on 16 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

María Elósegui
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

I. INTRODUCTION

1. The applicant complained, under Article 6 § 1 of the Convention, that this provision had been violated because his conviction for drug trafficking had been based *to a decisive extent* (“almost exclusively”, as he argued, see paragraph 37 of the judgment) on the testimony of his co-accused, N.M., who had been granted the status of “cooperating accused” as institutionalised by the domestic legislature, namely in the relevant provisions of the Code of Criminal Procedure with effect from 1 January 2010 (see, for the pertinent legal framework, paragraphs 20-34 of the judgment). In particular, he complained that the statements in question had been unreliable, as his co-accused had cooperated with the criminal authorities in exchange for a reduction of her sentence.

2. The judgment concludes that there has been no violation of Article 6 § 1 because, in the circumstances of the case, it cannot be said that the applicant’s conviction was based on evidence in respect of which he was not, or not sufficiently, able to exercise his defence rights under Article 6 § 1, or that the overall fairness of the proceedings was compromised as a result of the courts’ reliance on the statement by his co-accused (see paragraphs 54 and 55 of the judgment).

3. I respectfully disagree with such a conclusion and the corresponding point 2 of the operative provisions of the judgment holding that there has been no violation of Article 6 § 1 of the Convention. The applicant also raised an issue under Article 6 § 2 of the Convention. It is to be clarified that I will not examine this complaint merely because it was not communicated to the parties and not on the basis of what the Court states in the judgment, namely that the Court, as a master of the characterisation to be given in law to the facts of the case, has decided to examine the complaint only from the standpoint of Article 6 § 1, thus *de facto* subsuming the Article 6 § 2 complaint under the Article 6 § 1 complaint (see paragraph 35 of the judgment). This is a practice with which, in any event, I am not in agreement (see *mutatis mutandis*, my partly dissenting opinion in *Tomenko v. Ukraine*, no. 79340/16, 10 July 2025).

4. Under the relevant domestic law, i.e. the pertinent provisions of the Code of Criminal Procedure, the “cooperating accused” could have the benefit either of not being punished at all or of having a reduced sentence (see paragraphs 26 and 27 of the judgment). In the end, the “cooperating accused” was given the same sentence as that proposed by the prosecutor, that is a three-year prison sentence, and, as the applicant argued, given that N.M. had faced a sentence of between ten and eighteen years, the advantage she had obtained as a cooperating accused had thus been considerable (see paragraphs

15 and 39 of the judgment). On the other hand, the applicant was sentenced to ten years in prison (*ibid.*).

II. TWO DIFFERING VIEWS ON OVERALL FAIRNESS

5. As I have explained in other separate opinions¹, there are two views or approaches as to the meaning of “overall fairness” of a trial: on the one hand, what I may call the “qualified procedural fairness view”, which is followed by the Court’s current case-law and allows for a balancing exercise, and, on the other, what I may describe as the “principled view of procedural fairness” (or the “normative view”), which was to be found in some of the Court’s case-law in the past and which is also supported by substantial academic literature.

6. My preference is for the principled view, which I thus advocate in this opinion. This approach does not permit balancing against other interests or considerations, since it regards each guarantee under Article 6 (save for the exceptions expressly stated in Article 6 § 1) as an independent guarantee, possessing an autonomous procedural value that must be respected with full normative force at all times². The principled, non-instrumental model recognises fairness as an intrinsic and legal concept capturing the true essence of Article 6, under which justice is inseparable from fair process itself, regardless of the outcome. I will revert to and elaborate on this later.

7. While the current case-law approach is specifically known as the “overall fairness” approach, I consider that the normative approach also – and more genuinely – pertains to the overall fairness of the trial. The adjective “overall” literally means taking everything into account. In the context of a trial, “overall fairness” literally and properly means fairness in every respect, as indeed supported by the principled view. This stands in contrast to the current case-law approach, which endorses a concept of fairness that may be lacking in some respects but is “counterbalanced” by other considerations. In my view, the normative perspective is the most orthodox, as it accords with the wording and purpose of Article 6 and upholds the principle of effective protection of the right in question; far from being utopian or idealistic, it offers a rigorous interpretation that both reflects the text and advances its

¹ See *Xenofontos and Others*, nos. 68725/16 and 2 others, 25 October 2022 (paragraphs 28-50 of the opinion); *Souroullas Kay and Zannettos*, no. 1618/18, 26 November 2024 (paragraphs 5-36 of the opinion); *Yüksel Yalçınkaya v. Türkiye* [GC] no. 15669/20, 26 September 2023 (paragraphs 7-9 of the opinion); *Snijders v. the Netherlands*, no. 56440/15, 6 February 2024 (paragraphs 24-86 of the opinion); *W.R. v. the Netherlands*, no. 989/18, 27 August 2024 (paragraphs 4-39 of the opinion); *Sakkou v. Cyprus*, no. 4429/23, 10 July 2025 (paragraphs 8-13 of the opinion); *Opalenko v. Ukraine*, no. 46673/18, 17 July 2025 (paragraphs 4-15 of the opinion).

² On this approach, see the opinions cited in note 1 above, the bibliography referenced therein, as well as 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), at pp. 27–28.

underlying purpose, thereby ensuring its effective and legitimate application. By contrast, the current case-law approach, which adopts a balancing method regarding the specific guarantees in Article 6, can be described – using Ashworth’s term – as “heresy”³, because it does not conform to the wording and aim of Article 6 or to the principle of effectiveness. This approach deems a trial to be fair overall even when a significant guarantee is absent or breached, which is not only misleading but is also an oxymoron.

8. In my humble submission, the principled view on overall fairness offers several advantages over a qualified view which relies on discretionary balancing exercises. By grounding decisions in clear, general principles, it better upholds the rule of law and ensures legal certainty, making outcomes more predictable and fairer. Unlike the qualified view, the principled approach promotes equality by treating individuals consistently, enhances transparency by basing reasoning on established norms, and strengthens accountability by limiting arbitrary discretion. The rule of law is intrinsically and necessarily tied to the principle of procedural fairness and, in my view, to a principled or normative understanding of procedural fairness. The central components of the rule of law – legality, non-arbitrariness and certainty – can only be secured through processes that are themselves fair, consistent and transparent.

9. In my partly dissenting opinion in *Opalenko* (cited above)⁴, I observed that Tom R. Tyler’s social psychological theory of procedural justice – emphasising voice, neutrality, respect, and trust – corroborates the principled (normative) view of Article 6, according to which its guarantees are intrinsically valuable, non-negotiable, and cannot be balanced away.

10. Following the principled view, it is submitted that while complaints regarding a specific guarantee – explicit or implicit – should be examined and decided independently, rather than together with the general right under Article 6 § 1, a violation of a specific guarantee nevertheless automatically constitutes a breach of the general right to a fair trial under Article 6 § 1. This provision thus encompasses all specific guarantees and links them under the umbrella of procedural fairness.

11. This view also finds support in Trechsel, who compares the right to a fair trial to the Swiss dish *Birchermüesli* (similar to a muesli porridge in English). He likens the specific aspects of the right to a fair trial to the morsels of fruit in *Birchermüesli*, while the general framework of the fair trial – namely, the general right under Article 6 § 1 – corresponds to the porridge

³ See Andrew Ashworth, “Security, Terrorism and the Value of Human Rights” in B. Goold and L. Lazarus (eds), *Security and Human Rights* (Oxford: Hart Publishing, 2007), 203, at p. 215. See also Laura Hoyano, “What is balanced on the scales of justice? In search of the essence of the right to a fair trial”, (2014), *Criminal Law Review* 1, at p. 13.

⁴ See paragraph 15 of the said opinion.

itself⁵. Trechsel further argues that the right to a fair trial under Article 6 § 1 should primarily be considered *lex generalis*, while the specific aspects under Article 6 § 3 – and, I would add, all the specific guarantees enshrined in the various paragraphs of Article 6 – serve as *leges speciales*. Building on Trechsel’s illustrative example, I would suggest that procedural fairness can be viewed as the “milk” in a bowl of cereal representing Article 6. Procedural fairness (the “milk”) simultaneously pervades both the general right (the “porridge” and the specific guarantees provided under Article 6 (the “morsels of fruit”). It is essential to the composition of the bowl of cereal as a whole and must not be undervalued or ignored.

III. EXAMINING CASES FROM THE PRINCIPLED (NORMATIVE) PERSPECTIVE OF OVERALL FAIRNESS

12. In adopting the principled view on overall fairness, I have argued in some separate opinions⁶ that the prohibition of fundamental flaws in a criminal trial – flaws which inherently taint and contaminate the proceedings as a whole, such as those arising from the evidence of a key biased witness with ulterior motives in testifying – constitutes an implicit or implied specific guarantee of a fair trial. Failure to secure this guarantee infects the entire proceedings and extinguishes the fairness of the trial. In particular, I consider fundamental flaws capable of undermining the entire trial to include convictions based solely or decisively on the testimony of an “immunised accomplice” (as in *Xenofontos and Others* and *Souroullas Kay and Zannettos*, both cited in note 1 above) or on the testimony of an accomplice rewarded with a suspended prison sentence (as in *Sakkou*, *ibid.*) or (as in the present case) on the testimony of an accomplice who has received a reduced sentence.

13. The implied guarantee in question should be understood as a *negative guarantee*, being derived from the general right to a fair trial under Article 6 § 1 of the Convention, and in particular from the requirement of procedural fairness. Article 6 § 1 thus encompasses an implied guarantee that a person’s right to a fair criminal trial must be free from any fundamental defect capable of contaminating the proceedings in their entirety.

14. It is pertinent to note that the notion of fairness has evolved to take on a *dual character*, carrying both positive and negative dimensions. *Positively*, it means being just, equal and respectful, among other qualities, and *negatively*, it implies the absence of bias, partiality or injustice. Thus, to call something “fair” is not only to affirm the presence of just treatment, but also

⁵ Stefan Trechsel, “The Character of the Right to a Fair Trial” in J. D. Jackson and S. J. Summers (eds.), *Obstacles to Fairness in Criminal Proceedings – Individual Rights and Institutional Forms* (Hart, Oxford, 2020), 19, at pp. 19-20, 23-24.

⁶ *Xenofontos and Others*, *op. cit.* (paragraphs 29-32 of the opinion); *Souroullas Kay and Zannettos*, *op. cit.* (paragraphs 13-14 of the opinion); and *Sakkou*, *op. cit.* (paragraph 9 of the opinion).

to deny the existence of bias, unfair advantage, prejudice or discrimination. The same applies with respect to the Convention and other disciplines⁷, where what we call “effective” is sometimes best understood by considering its opposite – recognising what is not effective helps to clarify what truly is.

15. The integrity of criminal proceedings must be conceived as a continuous and indivisible whole, such that any tainted evidence contaminates the process in its entirety. Accordingly, a court faced with such a situation cannot, in principle, justify the conviction and punishment of the accused.

IV. UNPACKING PROCEDURAL FAIRNESS: NORMATIVE AND OTHER PERSPECTIVES

16. To gain a clearer understanding of the scope of the principled perspective on overall fairness, it is useful to consider additional observations concerning the meaning of procedural fairness as a normative concept and the various functions it may serve. The necessity of doing this in a thorough manner is imperative since I am the only judge in the composition of the present case who is in the minority in finding a violation of Article 6 § 1 of the Convention.

17. The right to a “fair” trial is one of only two rights in the Convention that is explicitly qualified by an adjective, namely the word “fair” (the other being “effective” remedy). This means that the Convention does not simply guarantee the right to trial, but more specifically to a “fair” one. The distinction is crucial. Before the enactment of the Convention, especially during the First and Second World Wars, there were many instances of punishment being imposed without any trial at all. Therefore, this deliberate linguistic choice is significant: the drafters of the Convention did not merely guarantee the existence of judicial proceedings – a trial – but insisted that those proceedings must satisfy the qualitative standard of “fairness”.

18. The importance of Article 6 is underscored by the Court itself, which has affirmed that the right to a fair trial occupies a “central position” in the Convention and “reflects the fundamental principle of the rule of law”⁸. The Court has further emphasised that this right holds a prominent place in a democratic society and that a restrictive interpretation would not be consistent with the Article’s object and purpose⁹. Notably, Article 6 is also the most frequently invoked provision before the Court, described as “pre-eminent

⁷ See Robert Venturi and Denise Scott Brown, *Architecture as Signs and Systems: For a Mannerist Time*, Cambridge, Massachusetts, 2004, at pp. 17-18.

⁸ See *Sunday Times v. the United Kingdom*, no. 6538/74, § 55, 26 April 1974 (Plenary).

⁹ See *Delcourt v. Belgium*, no. 2689/65, § 25, 17 January 1970; *Moreira de Azevedo v. Portugal*, no. 11296/84, § 66, 23 October 1990; *De Cubber v. Belgium*, no. 9186/80, §§ 30, 32, 26 October 1984.

because it provides the platform for the vindication of all other legal rights”¹⁰. It is therefore correct to observe that Article 6 is not merely a procedural guarantee but also a normative foundation supporting the enforcement of all other Convention rights. By safeguarding fairness as a value in itself, the Convention ensures that justice remains principled, effective, and worthy of trust.

19. As said above, the principled or normative view conceives of and also treats fairness as *indivisible*: once a fundamental procedural guarantee is breached, the integrity of the trial is irreparably compromised. This approach aligns closely with Dworkin’s principle of integrity, which demands coherence and principled consistency across adjudication¹¹. Put differently, as I have argued elsewhere¹², the principled view reflects Dworkin’s constructive interpretation, grounded in the conception of “law as integrity” – a moral reading of law as a single, coherent, and internally consistent whole that presents legal practice in its best light and fosters unity.

20. *Integrity* does not permit fairness to be “balanced away” by offsetting guarantees and safeguards, since such reasoning fragments the law into *ad hoc* compromises rather than a coherent moral order. Thus, from a normative standpoint, the denial of an Article 6 guarantee cannot be rectified through the weighing-up of countervailing considerations without eroding the very legitimacy of the trial. By contrast, as said above, the qualified approach — evident in the Court’s current jurisprudence — treats fairness as a contextual assessment, asking whether the proceedings, taken in their entirety, can still be regarded as fair notwithstanding particular deficiencies.

21. The *principle of integrity* assumes central importance. *Integrity* demands that adjudication exhibit coherence and fidelity to the normative order and doctrinal consistency; the violation of even a single procedural guarantee fractures that coherence. To reiterate, once fractured, procedural fairness cannot be restored by means of compensatory safeguards, for fairness is not the product of a balancing calculus but the expression of a normative condition. Put differently, the integrity of the trial depends *on respecting the ensemble of guarantees as an integrated whole*. To breach one is to compromise the entire structure, leaving the trial irreparably flawed. Integrity, in this sense, is not concerned with striking balances but with sustaining a principled order. It thus requires that fairness be conceived *normatively*, in normative rather than instrumental terms. Only then does Article 6 retain its role as the cornerstone of a democratic society governed by the rule of law.

¹⁰ See Laura Hoyano, “What is balanced on the scales of justice? In search of the essence of the right to a fair trial”, *op. cit.*, at p. 4.

¹¹ Ronald Dworkin, *Law’s Empire* (Harvard University Press, 1986), pp. 176–177, 225–226, 410–411.

¹² In paragraph 35 of my opinion in *Xenofontos and Others*, *op. cit.*

22. Fairness, therefore, is best understood as a *shield*, inscribed with the guarantees of Article 6, resisting external pressures and other considerations – such as claims of public interest – that would otherwise pierce it. On the other hand, the qualified approach fractures integrity by treating fairness *as a calculus* rather than a principle. Only the principled view, as I respectfully submit, aligns with the understanding that procedural fairness is a normative concept and with the principle of integrity that governs the right to a fair trial.

23. Procedural fairness is not only an Article 6 guarantee but also *a mirror*: it guarantees protection for the individual, but it also mirrors the transcendental demand that justice must be grounded in fairness. This idea is evident in the understanding that a “fair” trial carries a *transcendental quality and dimension*, extending beyond the immediate procedural guarantees of Article 6 to the deeper and underlying notion of justice that gives those guarantees coherence, ensuring they do not operate as isolated procedural entitlements but as an interconnected manifestation of a single, integrated ideal. The adjective “fair” transforms the trial from a purely institutional process into *an embodiment of a normative ideal*.

24. From the standpoint of the principled view of fairness, procedural fairness is conceived as a *normative concept*, thereby rendering, as said above, all guarantees under Article 6 *indivisible*, but also as *non-negotiable*. Each guarantee possesses *autonomous rather than merely instrumental value*: it is not a device or instrument to be weighed against competing considerations, but a *constitutive element* of the very idea of a fair trial. It is to be observed that the indivisibility and non-negotiable nature of procedural guarantees underscore their normative character.

25. A normative concept is one that prescribes *how things ought to be*, regardless of the consequences. Procedural fairness is normative in the sense that it carries an intrinsic moral and legal obligation – it is not merely instrumental to achieving a fair outcome but is itself a constitutive element of justice. This also means that Article 6 guarantees are categorical, intrinsically valuable and not instruments that can be traded off against competing considerations. Each guarantee is understood to carry autonomous normative weight: it has to be respected not because it produces a better outcome (through balancing), but because fairness in procedure is itself a necessary condition of justice. A trial is not “fair overall” if it is built upon the denial of guarantees that Article 6 enshrines as categorical. The principled or normative view of overall fairness treats fairness as a principle, not just as a tool, and protects human dignity and the rule of law. It shows that justice depends not only on what verdict is handed down, but on how we get there, for the legitimacy of the verdict is inseparable from the fairness of the path leading to it. The principled view matches this because it insists that every guarantee must be upheld regardless of competing interests. It is not like the qualified view, which shifts toward a consequentialist, instrumental understanding.

26. Consequently, procedural fairness, as a normative concept, *entails an obligation that must be observed*. The very essence of Article 6 is *prescriptive* in nature, requiring action in accordance with its provisions. This means it is not merely a descriptive standard of conduct but a binding principle that imposes duties on those subject to it. Procedural fairness, therefore, is a core normative principle central to justice and democratic legitimacy that mandates fairness in the procedures leading to decisions affecting individuals' rights and interests.

27. The principled view is likewise the only approach that is fully consistent with *the principle of effectiveness*, which demands that each procedural guarantee be fully observed, thereby ensuring that all guarantees are rendered practical and effective, and that they operate as indispensable conditions of fairness; none of them, as said above, may be “sacrificed” without depriving the right of its substance and rendering it illusory. Hence, under Article 6, effectiveness means that every guarantee operates as an indispensable condition of fairness.

28. Article 6 is to be understood as a “framework right”, encompassing the various aspects, guarantees, and principles of a fair trial. To consider procedural fairness as a normative concept is the only approach which remains fully in concordance with all other fundamental principles enshrined in Article 6 – most notably, the principles of the *rule of law*, *democracy*, *integrity*, *human dignity*, *transparency*, *equality*, and *adversarial proceedings*. These principles constitute the pillars upon which Article 6 is built, conferring legitimacy upon the right to a fair trial, from which they are inseparable. Procedural fairness, as a normative concept, gains strength from its synergy – not merely its symbiosis – with these foundational principles. Their application is *mutually reinforcing*: the principles sustain and enrich procedural fairness, while procedural fairness, in turn, gives them coherence and practical effect. Some of these principles, namely, the principles of the rule of law, democracy, and effectiveness, are expressly mentioned in the Preamble to the Convention and operate as cross-cutting principles shaping the interpretation, development, and application of the rights it enshrines. The foundational principles of Article 6 all converge on the normative conception of fairness and each of them presupposes indivisibility: fairness must be secured consistently, without trade-offs, for trials to retain their legitimacy. The qualified (balancing) view, by contrast threatens to fragment these guarantees and foundational principles and risks reducing them as well as their coherence to mere formalities.

29. Apart from these foundational principles, there is also a range of other principles that function both as Article 6 guarantees and as sub-principles. In one way or another, they represent specific aspects or concrete applications of the more general principles within the context of Article 6. For example, the principles of equality of arms and adversarial proceedings operate as sub-principles of the broader principle of equality; the principle of effective

participation in the trial flows from the overarching principle of effectiveness; and the right to legal assistance – including the right to be represented by a lawyer – is a specific expression of both the principles of equality and effectiveness, ensuring the accused can effectively defend themselves. Recognising these derivative principles as sub-principles of broader foundational ideals strengthens the normativity of procedural fairness by transforming it from an abstract value into a structured and prescriptive framework.

30. The indivisibility, coexistence, and synergy of all the principles and sub-principles enshrined in Article 6 explain why the guarantees it contains cannot be compromised without undermining the very architecture of the Convention system. Taken together, these principles – under the umbrella of procedural fairness as a normative concept – form a coherent framework through which procedural fairness emerges not only as a structural feature of adjudication but also as a central pillar of a just legal order.

31. While principles such as the rule of law, democracy, and human dignity are themselves overarching foundations of the legal order, they can nevertheless be understood as converging under the umbrella of procedural fairness within Article 6. This is because procedural fairness operationalises these principles in the concrete context of judicial proceedings: the *rule of law* requires fairness in adjudication, *democracy* presupposes equal participation before impartial institutions, and *human dignity* is safeguarded when individuals are treated with respect and equality in the process. In this way, Article 6 functions as a procedural expression of higher-order principles, giving them tangible form in practice. Thus, even though each principle has an umbrella-like character, they find a *unifying point of application* within the overarching canopy of procedural fairness.

32. Returning to the *principle of integrity*, it is this principle that governs the interaction not only among the guarantees of Article 6, as mentioned above, but also the interplay among the foundational principles themselves – all under the umbrella of procedural fairness as a normative concept. *Integrity* here is not simply an additional principle among others; it provides the connective tissue that ensures coherence between individual guarantees and broader systemic principles and values. By linking rights such as equality of arms, impartiality, and the right to a fair hearing, the principle of integrity prevents fragmentation and elevates procedural fairness from a collection of discrete protections into a holistic standard. The integrity of the trial thus emerges as the ultimate point of convergence, ensuring that procedural fairness is not merely formal compliance but a substantive guarantee of justice.

33. Procedural fairness is not monolithic; it functions simultaneously as a *procedural, substantive, normative, interpretative, constitutive and evaluative* principle. There is no doubt that procedural fairness is a *procedural principle*, since the right under Article 6 of the Convention is

mainly procedural in nature. As a *substantive principle*, procedural fairness sets out and identifies the concrete rights and guarantees that constitute a fair trial and embodies the inherent values of justice, fairness, equality before the law, and respect for the dignity of all persons involved in legal proceedings. As such, it is not merely a *procedural* safeguard but a *substantive* entitlement, rooted in the foundational values of equality, morality, human dignity, and the rule of law that animate the Convention.

34. As already explained above, in its *normative dimension*, procedural fairness considers all Article 6 guarantees as indispensable norms possessing inherent and autonomous value, not contingent upon outcomes or instrumental considerations. It treats Article 6 guarantees as cumulative and indivisible such that the absence or impairment of any one necessarily undermines the fairness of the trial as a whole regardless of whether other guarantees are respected.

35. As an *interpretative prism*, now, procedural fairness sustains the coherence and dynamism of Article 6 by establishing *the benchmark* against which respect for its guarantees can be assessed, as tested in a concrete application, and serves as a hermeneutic tool when provisions are open-textured or ambiguous. In this role, it gives concrete expression to the principle of effectiveness within the framework of the right to a fair trial, serving as the means through which that principle takes tangible form. Accordingly, unless procedural fairness is understood in this principled and value-laden way, a trial cannot satisfy the demands of effectiveness and, more profoundly, cannot genuinely be regarded as fair.

36. Procedural fairness also serves as both a *constitutive* and an *evaluative* principle. It is *constitutive*, because it shapes the content of Article 6's individual guarantees, explicit or implicit, generating and organising the system of fair trial guarantees and providing the conceptual foundation from which the rights derive and through which they are integrated into a coherent whole. It is the animating force that imbues each explicit and implicit guarantee with principled content, ensuring that they do not operate as isolated procedural entitlements but as interconnected manifestations of a single, integrated ideal. Without this unifying rationale, the various rights of Article 6 would risk degenerating into a fragmented set of technical rules, devoid of coherence and direction. Much like the circulatory system of the human body, procedural fairness sustains the life of each individual right, coordinates their mutual functioning, and serves as the measure of the overall health of the fair trial guarantee – without it, the system would wither and collapse. There is a *subtle difference* between procedural fairness as a *substantive principle* and as a *constitutive principle*. As a *substantive principle*, it concerns the concrete content of fair trial rights and the underlying values they embody – such as justice, fairness, equality before the law, and respect for human dignity. As a *constitutive principle*, by contrast, it performs an architectural role: it generates, organises, and integrates those

rights into a coherent and unified system, ensuring that the fair trial guarantee is not a mere collection of discrete safeguards but a structured whole.

37. Procedural fairness is also an *evaluative* principle because it provides the standard against which the fairness of proceedings are tested in their concrete application. In this way, procedural fairness is not one safeguard among many, but the *structural principle* that underlies, unites, and gives coherence to all guarantees, ensuring their consistent and cumulative application. The difference between the evaluative and interpretative functions of procedural fairness is that the *evaluative function* tests the *actual operation* of procedural guarantees in a concrete case to determine whether the proceedings met the Article 6 fairness standard, while the *interpretative function* defines and informs the meaning and scope of those guarantees themselves.

38. Taken together, these multiple functions of procedural fairness enhance its normative character, as both a *self-standing entitlement* to a fair trial and the *unifying framework* that integrates all Article 6 rights. By binding together explicit and implicit safeguards into a coherent whole, it provides the right to a fair trial with coherence, integrity, and practical force, thereby securing the rule of law and the protection of individual rights under the Convention. It can be said that procedural fairness functions as the *central organising principle* and *pervasive and cross-cutting normative standard* of Article 6.

39. It has been my longstanding position, expressed in both judicial and non-judicial capacities, that the principle of effectiveness operates not merely as an *interpretative method or tool* but as a *norm of international law* – one that permeates every provision of a Convention to secure the practical protection of rights and the dignity they embody. It would indeed be difficult to accept that the principle of effectiveness, which applies equally to substantive rights and to procedural rights, is a norm of international law, while procedural fairness itself would not be. This is one reason why I advance a similar claim with respect to procedural fairness, though it is not the only such principle.

40. Accordingly, I argue that procedural fairness is not merely an *interpretative tool* but also a *norm of international law* in its own right. It is reflected in each of the guarantees of Article 6 of the Convention, underscoring both the indispensable value of those guarantees and the essential role of fair procedures in sustaining the legitimacy of judicial processes. Procedural fairness is a *general principle of international law*, deeply embedded in the practice and inherent powers of international courts and tribunals, including the European Court of Human Rights. It is intimately tied to their legitimacy, underpinning their authority and acceptance within the international legal order. Legitimacy itself requires adherence to procedural fairness as a normative standard, giving it binding force that goes beyond mere instrumental utility. The guarantees embodied in Article 6

affirm the right to a fair trial as a cornerstone of the rule of law and of the procedural legitimacy upon which the international legal order ultimately depends. Moreover, procedural fairness, as said above, is recognised as a general principle of international law, and therefore as a source of international law under Article 38 of the Statute of the International Court of Justice. The fact that the right to a fair trial under Article 6 is, in defined circumstances, derogable pursuant to Article 15 of the Convention does not diminish its normative status. Rather, derogability merely qualifies its application in exceptional situations, without undermining the fundamental character of procedural fairness as a principle of international law.

V. RETURNING TO THE FACTS OF THE CASE

41. After establishing the theoretical underpinnings of procedural fairness, I will now return now to the present case. It should be observed that the present case differs from the other three above-mentioned cases in which I was a member of the composition, namely, *Xenofontos and Others*, *Souroullas Kay and Zannettos*, and *Sakkou*, which involved accomplice witnesses who testified against the applicant in return for an advantage.

42. Unlike those cases, in the present case the involvement of the accomplice witness was regulated by domestic law. In my view, however, this distinction is immaterial to the fairness criterion and the overall fairness of the trial. The core concerns – reliability and potential bias – remain unchanged, and such testimony inevitably contaminates and therefore fractures the fairness of the trial as a whole, contrary to the principle of integrity, as explained above. Although it is immaterial for the fairness criterion whether cooperation between the prosecution and an accomplice is legally regulated or not, or what form that cooperation takes, it can readily be observed that, while non-regulated cooperation may compromise the accused's protections, regulated cooperation may ensure some transparency regarding both the fact of the cooperation and the rewards granted to the accomplice.

43. It should be underlined, however, that, despite this difference, in all four cases there was no evidence which, independently of the testimony of the accomplice witness (the cooperating accused in the present case), would have been sufficient to lead to the conviction of the applicant.

44. In the light of the foregoing, if the involvement of a witness in the trial, compensated through an advantage, breaches an Article 6 guarantee, then *no legal regulation of this unfairness can make the trial fair*. Law can only prohibit unfairness, not regulate it. Similarly, in my partly dissenting opinion concerning euthanasia in *Mortier v. Belgium* (no. 78017/17, 4 October 2022), I argued that because euthanasia was not permitted by Article 2 of the Convention as an exception to the prohibition of deprivation

of life, its legal regulation by the relevant member State did not render it permissible under the Convention.

45. I respectfully submit that the absence of an Article 6 guarantee cannot be remedied by any form of safeguard. Stated more emphatically, there exists no counterbalancing measure, safeguard, or factor capable of compensating for the absence or breach of an Article 6 guarantee. To allow otherwise would risk reducing Article 6 to a contingent or negotiable standard, contrary to its character as an indispensable guarantee. Accordingly, I submit that neither the case-law's recognised safeguards, mentioned in paragraph 46 of the judgment (see also paragraphs 42-43), nor those considered as such by domestic legislation and case-law, can serve as a remedy for the absence of an Article 6 guarantee.

46. In my humble submission, the use of testimony of the “cooperating accused” as in the present case, given in return for personal benefit, strikes at the very heart of a fair hearing. The Latin maxim, *nemo debet esse testis in propria mercede* (meaning, no one ought to bear witness in return for their own profit), which is pertinent in the present case, rests upon the principle of impartial testimony, untainted by inducement. When a witness, especially a key witness, as in the present case (as well as in the other three cases mentioned above), gives evidence under the shadow of advantage, not only is the reliability of that evidence irreparably compromised, but also and most importantly the fairness criterion is violated.

47. Apart from the implied guarantee of Article 6 § 1, already discussed, the principles of equality of arms and adversarial proceedings are rendered illusory when the prosecution, as in the present case, relying on the law, presents testimony secured by promise or expectation, while the accused is left to confront evidence shaped by self-interest rather than by a genuine search for the truth. I am of the view that in such cases, the testimony of a cooperating accused alters the balance of the judicial process and fair trial, since the playing field between the two parties – the prosecution and the defence – is tilted, not by the weight of evidence, but by the weight of inducement. No judicial caution or procedural safeguard can neutralise this structural inequality.

48. The principle of adversarial proceedings demands that both sides in a trial contend on fair terms. However, where one side relies upon the testimony of an accomplice given in exchange for a benefit or reward, the proceedings cease to be truly adversarial, even if the accused retains the right to cross-examine.

49. Furthermore, equality of arms requires a fair opportunity for the defence to challenge evidence. But when the core of that evidence springs from motivation based on interest, the defence engages in a contest already poisoned at its source. Consequently, once testimony is conditioned by reward, the very essence of Article 6 § 1 of the Convention is breached. As said above, fairness cannot be restored by recourse to formal regulation, for

substantia non verba quaerenda sunt – it is the substance, not the mere words of legal form, that defines justice!

VI. CONCLUSION

50. By way of conclusion, it is to be observed that it was not only one of the Article 6 § 1 implied guarantees that was breached in the present case, but three: first, the prohibition of a fundamental flaw which is inherently capable of tainting and contaminating the proceedings as a whole, namely, in the present case, the evidence of an accomplice witness (“the cooperating accused”), who had an interest of her own to gain by giving evidence, and who was therefore biased by definition, rendering her testimony inherently unsafe and problematic; second, the guarantee of adversarial proceedings, and third, the guarantee of the equality of arms.

51. Nevertheless, the existence of even a single such deficiency is, in itself, sufficient to constitute a violation of Article 6 § 1 of the Convention.

52. Lastly, it could be said that the fight against serious organised crime – which was the purpose of regulating the institution of “cooperating accused” (see paragraphs 28 and 45 of the judgment) – should never be waged at the expense of the rights of the defence, for the preservation and effective protection of Article 6 rights ought to be seen as one of the Convention’s most eminent and enduring achievements. By consecrating procedural fairness as a non-negotiable and inviolable cornerstone, the Convention affirms its most profound commitment: that, for the rule of law to be upheld, the administration of justice must be conducted without derogation from the indispensable demands of procedural fairness.