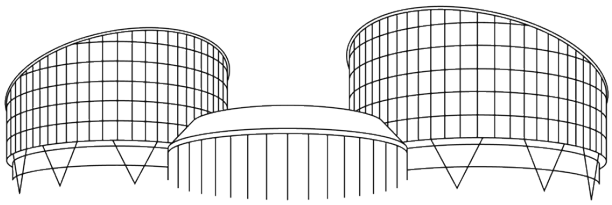

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

# CASE OF GORGIEVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

*(Application no. 18002/02)*

JUDGMENT

STRASBOURG

16 July 2009

**FINAL**

*10/12/2009*

*This judgment may be subject to editorial revision.*

**In the case of** Gorgievski v. the former Yugoslav Republic of Macedonia**,**

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

# PROCEDURE

1. The case originated in an application (no. 18002/02) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian national, Mr Ljupco Gorgievski ("the applicant"), on 13 March 2002.

2. The applicant, who had been granted legal aid, was represented by Mr R. Aleksovski, a lawyer practising in Kriva Palanka. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged, *inter alia*, that he had been entrapped into committing the offence by an *agent provocateur* whose testimony had then served, to a decisive extent, to secure his conviction. He also complained that the principle of the equality of arms and his defence rights had been violated and that the domestic courts' decision had not been sufficiently reasoned.

4. By a decision of 6 May 2008, the Court declared these complaints admissible.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Kriva Palanka.

6. He worked as a sanitary inspector at a border post near the city of Delčevo. His tasks included sending samples of imported products to laboratories for further examination. The examination fees were paid directly to the laboratories by the importers.

7. On 22 July 1999 a company from Vinica ("the company"), which imported goods on a regular basis, presented a shipment for inspection at the border post. Mr A., the owner and manager of the company, allegedly agreed with the applicant to meet on 26 July 1999.

8. According to Mr A., they met on 27 July 1999, when the applicant told him that he could pay the examination fees directly to the applicant, who would then send fewer samples for inspection. As he suspected that the applicant was actually demanding a bribe, Mr A. reported the matter to the police. The police then suggested that he should offer the applicant a sum of money in banknotes which they had marked in order to keep track of them.

9. On 29 July 1999 Mr A. and his business partner and relative, Mr P., who was aware of the alleged conversation, came to the border post to look for the applicant. The applicant and Mr A. met in a restaurant near the applicant's office. Mr A. gave 400 German marks (DEM) to the applicant and left. The applicant was subsequently arrested in front of his car.

### a) The pre-trial proceedings against the applicant

10. On 29 July 1999 the investigating judge of the Delčevo Court of First Instance ("the trial court") started an investigation on the grounds of reasonable suspicion that the applicant had accepted a bribe of DEM 400. The applicant was remanded in custody for 30 days as it was feared that he might obstruct the investigation by interfering with witnesses if released. A warrant to search his home was also obtained and the search was conducted on the same day.

11. According to the depositions taken in the course of these proceedings, the applicant stated, *inter alia*:

> "... Mr A. objected to the fact that I had taken too many samples for examination. I told him that I could not avoid sending samples for examination and that I had taken as many samples as necessary. Then he promised me that he would reward me if I showed restraint and avoided sending samples for examination. It was just a general proposition, without any exact figures as to the amount. I refused. Today, he came to the border post and asked me to meet him. We went to the restaurant and he repeated his offer. I refused again. He then put something in my pocket and left the restaurant. I was surprised at first and saw that it was DEM 400. I put it in my trouser pocket and went out to look for him. As he had gone, I was afraid and did not know whether I should go to the police. That's why I went to my car. There I was approached by several policemen who searched me and asked where the money had come from. As I was afraid, I told them that I had obtained it in Kočani... I would just like to add that there was nobody but the waiter in the restaurant during my meeting with Mr A..."

12. On 4 August 1999 the investigating judge examined Mr A. and Mr P. The former stated, *inter alia*:

> "... On Tuesday [date not specified], I arrived at the applicant's office and we both went to the restaurant. Then, he told me that 'he had examined [samples for] me for two years' ... he therefore told me that we should agree not to send any samples of imported products for examination... He also said that I should not pay [the examination fees] directly to [the name of the examination institutions], but should give the money to him. He said that the tariff per vehicle was DEM 200 or DEM 400 and that I should decide how much I would give... After I had left for Vinica, I considered the consequences of giving the money to the inspector [referring to the applicant] ... and decided to inform the chief inspector of Kočani about the case again... The chief inspector took [the two banknotes of DEM 200] from me and returned them on Thursday, 29 July 1999. At about 1 p.m. the same day, Mr P. and I arrived at the border post. I entered [the applicant's] office, but he was not there. Then he saw me... Then we went to the restaurant. We sat at a table, and Mr P. sat at a nearby table. There was nobody else in the restaurant... Since he knew that I would give him money, he asked me 'Do you have the money?'. I didn't reply, but took DEM 400 (2x DEM 200) out of my shirt pocket, [the applicant] took it with his right hand and put it in his shirt pocket. I told him that it was DEM 400 and asked if it was enough. He took the money out of his shirt pocket, looked at it and put in his trouser pocket. We stayed in the restaurant for about five minutes. The money changed hands at the beginning... I wish to add that on 29 July 1999 I noticed two persons in plain clothes, a man and woman, sitting in the restaurant... I assume they were policemen..."

13. Mr P. stated, *inter alia*:

> "... I consider that the applicant treated us badly as he did not take the usual quantities of samples for examination... We complained of his behaviour to the Customs Office, but they told us that nothing could be done... Five or six days before the day in question, Mr A. told me that the applicant had arranged a meeting with him, as the latter was no longer satisfied with the quantities of samples he had taken, but that he had asked for money to let our trucks through without difficulty. We informed the police, who told us that we must provide proof. On 29 July 1999 I went with Mr A. to the border post and I was in the restaurant when the money was given to the applicant. I was sitting at a nearby table when I heard the applicant saying that he wouldn't work for the State anymore, but for himself. Then I heard the applicant asking about the amount of money... I would like to add that when the applicant asked for the money, Mr A. put banknotes into his hand. He counted the money, saying that it was not enough. At that time, there were two people, a man and woman, in the restaurant, but I don't know who they were..."

14. On 5 August 1999 the investigating judge took a statement from Mr D., a market inspector who shared the office with the applicant, who stated, *inter alia*:

> "... On 29 July 1999 ... Mr A. came into my office asking where my colleague [the applicant] was. I told him that he had left. We talked for about an hour about various business issues. On his way out, he asked me to join him at the restaurant for a drink. I didn't answer. After half an hour, [the applicant] arrived... I told him that Mr A. was looking for him and had invited us for a drink at the restaurant. [The applicant] then left, but I don't know where he went. After five minutes, [the applicant] returned to the office looking distressed. He asked what I was doing and left the office without saying anything. After five minutes, I had to leave the office and saw the applicant

surrounded by four men and a woman. One of them asked me where I was from and called me to act as a witness while the applicant was searched. They informed me that they were policemen. The applicant took DEM 400 out of his pocket ... and we all went to the police station, where I made my statement ..."

15. On 10 August 1999 the applicant was released from detention.

### b) Criminal proceedings against the applicant

16. On 13 September 1999 the public prosecutor lodged an indictment charging the applicant that he had accepted a bribe in order not to take and send samples of imported products to laboratories for examination. The indictment was based on the events as described by Mr A. (see paragraphs 7-9 above).

17. On 11 February 2000 the trial court held a public hearing. It heard oral evidence from the applicant, Mr A. and Mr P. and admitted some documentary evidence. The applicant stated, *inter alia*, that he had been "set up" by Mr A. and intended to report him to the police, but that he had been prevented from doing so by the police officers who had arrested him before he got into his car. He also said that he might have wrongly stated in the pre-trial proceedings that he had not obtained the money from Mr A., as he had been under stress.

18. Mr A. stated, *inter alia*:

"... I informed the police officers and after being told that I would not face any charges, I decided to offer him the money. I didn't arrange anything with them [the police] before I went to Delčevo on 29 July 1999... [After the money had changed hands] I left and I don't know what happened afterwards. At that time, besides us, there was a man and woman sitting at another table and two other persons. I can't recall whether Mr P. was present when I gave the money to [the applicant]..."

19. Mr P. stated, *inter alia*:

"... It was I who insisted that Mr A. report [the applicant] to the police... I don't know whether the police had any plan... During the meeting on 29 July 1999 there were other people in the restaurant who I didn't know. It was me who left the restaurant first..."

20. The court also heard evidence from two witnesses called by the applicant concerning the events in the restaurant.

21. Mr T., a waiter at the restaurant, stated:

"As far as I can recall, Mr A. and the accused were sitting in the restaurant and stayed for about 5-6 minutes."

22. Ms S., a cook at the restaurant, stated:

"As far as I can recall on the date in question, Mr A. and the accused were sitting in the restaurant... There was nobody else besides Mr T... I cannot say what they discussed or how they behaved. I think that they stayed for about fifteen minutes."

23. On the same day, the trial court gave its judgment. It found the applicant guilty of accepting a bribe and sentenced him to three months' imprisonment. It established that after the discussion of 27 July 1999 between the applicant and Mr A., the latter had notified the police and they had instructed him to give the applicant money and to inform them if he accepted it. It further established that after Mr A. had put the money in the applicant's shirt pocket, the applicant had left the restaurant and gone into his office. After he left his office, the police, who had been informed about the event in advance, searched him and found the money.

24. The court rejected the applicant's arguments and noted that his conduct immediately after he accepted the bribe did not suggest an intention to report the matter to the police. Referring to the statements made by the witnesses at the trial, the court concluded that the applicant had not taken any steps to return the money to Mr A. or to inform anyone. In support of its findings, it referred to the statement made by Mr. D., to whom the applicant had also failed to report the bribe. The court also found that the police had waited to see whether the applicant would report the bribe and had acted when there had been no reaction on his part. The penalty was determined on the basis of, *inter alia*, the applicant's behaviour at the trial, the fact that he had previously performed his duties in accordance with the regulations and his lack of a criminal record.

25. The applicant appealed, arguing that the whole incident had been planned in advance and that he had been incited to commit the offence by the police and Mr A., and, accordingly, had been the victim of entrapment. He complained that the trial court had not taken into consideration the statements of the two witnesses who worked at the restaurant, who denied that anyone other than the applicant and Mr A. had been present when the money had changed hands. The testimony of Mr P., who in addition to being Mr A.'s business partner was also a relative, was therefore false. He also submitted a written statement made by Mr T. on 9 April 2000, which read, *inter alia*:

> "... I saw Mr A. reach towards the pocket of [the applicant's] shirt. I cannot say whether he put something in or took something out, but I remember that Mr A. left the restaurant immediately afterwards. At that moment, they did not speak to each other. After a couple of seconds [the applicant] quickly left the restaurant..."

26. The applicant further argued that the trial court had misinterpreted Mr D.'s statement concerning his behaviour after he left the restaurant. In that connection, he requested that another person, Mr O., be heard as a witness on the issue whether he had gone directly to his car or to his office after leaving the restaurant. He submitted a written statement of 9 April 2000 by Mr O. saying that he had seen the applicant go to his car after leaving the restaurant. He requested the Court of Appeal to hold a hearing.

27. At a hearing on 27 September 2000, the Štip Court of Appeal dismissed the applicant's appeal and upheld the trial court's verdict. It found that the trial court had correctly established the facts and applied the law. It had given sufficient reasons for its findings and these had been substantiated by the relevant evidence it had taken into consideration. The Court of Appeal rejected the applicant's allegations that he had been entrapped by an *agent provocateur* (Mr A.) and that he had not intended to keep the money, but to report the matter to the police. It noted that the applicant had told Mr A. that he was changing his working methods and that instead of paying the examination fees to the laboratory, he could pay them directly to the applicant. It also held:

> "... if the applicant had had no intention of taking and keeping the money, he should have reacted immediately. On the contrary, in Mr A.'s presence, he put the money in his pocket and said that it 'covered' only the current shipment and that they would agree upon further shipments. After Mr A. had left the restaurant, the applicant did not report the matter to the police or to anyone else. Indeed, he returned to his office and failed to inform Mr D., his colleague, about the gift received from Mr A. After several minutes, he left the office and was arrested by the police. If his intention was not to keep the money, he could have made that clear by reacting in the restaurant, especially as there were restaurant employees present. Instead, he went to his office and failed to inform Mr D. about the money..."

28. With regard to the alleged presence of Mr P. in the restaurant when the money was given to the applicant, the Court of Appeal held:

> "... Whether Mr P. was in the restaurant during the conversation between the applicant and Mr A. is irrelevant, as he had known about the earlier discussion between them and about the applicant's statement that they would find a new way of dealing with matters concerning the imports and samples. Mr P.'s presence in the restaurant at the material time is irrelevant..."

29. With regard to the written statements of the witnesses and the applicant's request for a further witness, Mr O., to be examined, the Court of Appeal held that the written statements had been examined by the trial court and were irrelevant to the final conclusion.

30. The applicant and his lawyer submitted separate requests for an extraordinary review of the final judgment (*барање за вонредно преиспитување на правосилна пресуда* – "the extraordinary request") before the Supreme Court. These requests were sent by registered mail and according to the delivery receipt, they were received by the trial court on 27 February and 19 March 2001, respectively. In the requests, the applicant complained, *inter alia*, that the lower courts had based their decisions on evidence which should not have been taken into consideration, as it had been obtained as a result of the police incitement to commit the offence and Mr A.'s role as an *agent provocateur*.

31. In a letter which was also sent by registered mail and received by the trial court on 12 June 2001, the applicant supplemented his extraordinary request, arguing that the facts as established by the Court of Appeal

contradicted the findings of the trial court, and that its finding that Mr O. had already been examined by the trial court was erroneous. He also alleged that the Court of Appeal had not examined his appeal in full, in particular concerning the role of Mr A. as an *agent provocateur* and the role of the police.

32. On 21 March 2001 the public prosecutor rejected the applicant's application to lodge a request for the protection of legality (*барање за заштита на законитоста*) with the Supreme Court.

33. On 18 September 2001 the Supreme Court dismissed the extraordinary request lodged by the applicant's lawyer, which it found had been submitted within the statutory time-limit, and upheld the lower courts' decisions. It held, *inter alia,* that the applicant's conviction had not been based on inadmissible evidence, but on a range of written and oral evidence adduced during the proceedings. It did not comment on the applicant's extraordinary request and supplementary submission.

34. On 17 October 2001 the State President replaced the applicant's sentence with a suspended term of two years' imprisonment.

## II. RELEVANT DOMESTIC LAW

### *1. Criminal Proceedings Act of 1997 ("the 1997 Act")*

35. Section 142 of the 1997 Act provided that, where there was a suspicion that an offence had been committed, the Ministry of the Interior ("the Ministry") was authorised to take measures in order, *inter alia*, to find the perpetrator or to prevent him or her from fleeing or going into hiding. In order to execute its tasks, the Ministry could, in addition to the measures and actions listed in the second paragraph of that section, take such other measures and actions as might be necessary.

### *2. Amendments to the 1997 Act adopted on 14 October 2004 ("the new Act")*

36. Section 142-b of the new Act provides that, with a view to securing information and evidence which cannot be otherwise secured, or the gathering of which would entail difficulties, special investigating techniques may be ordered where there are reasonable grounds for suspicion that certain criminal offences have been committed by, *inter alia*, an organised group. A simulated offer and acceptance of a bribe is among the permitted special investigating techniques (section 142-b § 1 (4)). Special investigating techniques must not be used to incite the commission of an offence. Persons using the special investigating techniques in order to secure information and evidence necessary for a successful investigation are not liable to prosecution.

37. Section 142-c provides that information, documents and objects obtained through a special investigating measure may be used as evidence in criminal proceedings.

38. Section 142-d §§ 1, 2 and 3 provide that, at the pre-trial stage, special investigating techniques may be ordered by the public prosecutor or an investigating judge. After an investigation has been commenced, the use of such techniques may be ordered only by an investigating judge. At the pre-trial stage, the use of special investigating techniques may be ordered by an investigating judge in a reasoned written decision following a reasoned written request by the public prosecutor, or by the public prosecutor in a reasoned written decision, but only in respect of a person whose identity is unknown.

39. Under section 142-e §§ 3 and 4, special investigating techniques may be used for four months at most. Evidence obtained through special investigating techniques cannot be used at trial if the techniques were applied without an order by an investigating judge or the public prosecutor or were contrary to the Act.

3. *Act on sanitary validity of food and products for general use* (Закон за здравствената исправност на животните намирници и на предметите за општа употреба, *Official Gazette no.53/91*)

40. Section 32 (1) provides that an importer pays the examination fees concerning the sanitary validity of food and products for general use.

4. *Rules on the amount and way of payment of fees for examination of the sanitary validity of imported food and products for general use* (Правилник за височината и начинот на плаќање на надоместокот за прокривање на трошоците за испитување и утврдување на здравствената исправност на намирниците и предметите за општа употреба што се увезуваат, *Official Gazette no. 58/93*)

41. Section 3 of these Rules provides that the importer pays in the State budget the fees for taking and sending samples to laboratories. The importer pays to laboratories the fees for examination of samples, according to an invoice that the laboratory would deliver to him or her.

# THE LAW

## I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

42. The applicant alleged that he had been denied the right to a fair trial by the involvement of an *agent provocateur* in the commission of the offence. He further alleged violations of the principle of equality of arms and of his defence rights since the Court of Appeal had refused to call Mr O. to give evidence and had ignored the statements of other witnesses relevant to his case. He also complained that the domestic courts' decisions had not been sufficiently reasoned. In this connection, he alleged a violation of Article 6 §§ 1 and 3 (d) of the Convention, the relevant parts of which provide:

Article 6 §§ 1 and 3 (d)

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

"3. Everyone charged with a criminal offence has the following minimum rights: ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

### 1. The parties' submissions

43. The applicant submitted that the Government, contrary to the domestic courts' decisions, had for the first time acknowledged, and sought to justify, the use of the *agent provocateur* in the proceedings against him. He maintained that section 142 of the 1997 Act had contained only a general provision which had not afforded any guarantee or safeguard against the use of an *agent provocateur*. That provision excluded any involvement of a judge and gave unrestricted power to administrative authorities. He further submitted that he had been entrapped into committing the offence by the *agent provocateur*, who had been working under the guidelines and instructions of the police. He averred that his conviction had been based, mainly and to a decisive extent, on the statements made by the *agent provocateur*. The other evidence had stemmed from his dealings with the *agent provocateur*, without whose intervention he would not have committed the offence. Lastly, he submitted that reasons should have been given for rejecting certain evidence and for refusing to examine Mr O.

44. The Government submitted that an *agent provocateur* had been involved in the present case in accordance with section 142 of the 1997 Act

(see paragraph 35 above), which provided the grounds for its use by the Ministry. The domestic courts, at all levels of jurisdiction, had considered the role of the *agent provocateur* and decided that the applicant would have committed the offence even without Mr A.'s intervention. The Supreme Court had dismissed the applicant's allegations that inadmissible evidence had been used against him after finding that his conviction was based on a considerable volume of evidence.

45. The Government further stated that the applicant had had a fair trial and that it had been for the domestic courts to assess the probative value of the evidence. The domestic courts had assessed the evidence before them and found that a repeated examination of the witnesses would be pointless.

## 2. The Court's assessment

### *a) General principles emerging in the Court's case law*

46. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140 and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (see *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX).

47. Furthermore, Article 6 § 3 (d) leaves it to the domestic courts, again as a general rule, to assess whether it is appropriate to call witnesses; it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words 'under the same conditions', is a full 'equality of arms' in the matter" (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B, and *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158).

48. The use of undercover agents must be restricted and safeguards put in place. The requirements of a fair criminal trial under Article 6 entail that the public interest in the fight against crime cannot justify the use of evidence obtained as a result of police incitement (see, *mutatis mutandis*, *Teixeira de Castro v. Portugal*, 9 June 1998, §§ 35-36, *Reports of Judgments and Decisions* 1998-IV).

49. Where the activity of undercover agents appears to have instigated the offence and there is nothing to suggest that it would have been

committed without their intervention, it goes beyond that of an undercover agent and may be described as incitement. Such intervention and its use in criminal proceedings may result in the fairness of the trial being irremediably undermined (see *Vanyan v. Russia*, no. 53203/99, § 47, 15 December 2005).

*b) Application of these principles in the present case*

50. The Court notes that the applicant complained under Article 6 §§ 1 and 3 (d) of the Convention. It will accordingly examine his complaints under these provisions taken together (see *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, § 56, ECHR 2001-X).

51. The Court observes that the domestic courts established that the whole operation had been planned in advance and monitored by the police (see paragraph 23 above). The marking of the bills and the organisation of the applicant's arrest, coupled with Mr A.'s immunity from prosecution, corroborates the conclusion that he acted in cooperation with and under the guidelines of the police (see paragraphs 8 and 18 above). According to the Government, Mr A. acted as *an agent provocateur* (see paragraph 44 above).

52. The Court considers, however, that Mr A. cannot be regarded an *agent provocateur* nor his actions amounted to incitement prohibited by Article 6 of the Convention. In drawing this conclusion, the facts of the case and the manner in which the domestic proceedings were conducted are the starting point. In this connection, the Court observes that there were two hearings held at first and second instance. The Supreme Court further examined the extraordinary request submitted by the applicant's representative, which it considered to have been submitted within the statutory time-limit. The proceedings were adversarial and the domestic courts reached their verdicts after hearing oral evidence from the applicant, Mr A., Mr P. and Mr D., and considering documentary evidence. The trial court further heard evidence from Mr T. and Ms S., who had been called as witnesses by the applicant. It is true, as the applicant contended that the Court of Appeal had wrongly believed that Mr O. had already given evidence before the trial court. However, the Court notes that this witness was called to give evidence regarding the applicant's conduct after the money had changed hands (see paragraph 26 above). His testimony would not have concerned the events preceding the incident of 29 July 1999 or the incident itself. On the material before them, the courts came to the conclusion that the critical incident of 29 July 1999 had occurred as a result of the discussion between the applicant and Mr A. on 27 July 1999. They established that on that date, the applicant had told Mr A. that he was changing his working methods, which they interpreted as meaning that the applicant had actually demanded a bribe. The police only became involved in the operation once the applicant had already contacted Mr A. with a view

to demanding a bribe. Mr A., who was not a State agent, but a private person importing food and products for general use, considering the consequences of the applicant having demanded a bribe, reported the matter to the police. The Court sees nothing inadequate or arbitrary in that decision.

53. The Court reiterates that its role in this matter is essentially subsidiary to that of the domestic authorities which are better placed than the Court to assess the credibility of evidence with a view to establishing the facts. The Court sees no reason to depart from the assessment made by the domestic courts. The applicant did not present any evidence, either in the domestic proceedings or in the proceedings before it, which would cast doubt on the conclusion that he was not entrapped into committing the offence. Nor did he take any steps to inform the authorities that Mr A. had attempted to offer him a bribe before the critical incident of 29 July 1999 took place (see paragraph 11 above). The actions of Mr A. did not incite the commission by the applicant of the offence of which he was convicted, since at the time Mr A. offered to pay the bribe the police were already in possession of information suggesting that the applicant had actually demanded a bribe.

54. The Court concludes in the circumstances that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

*Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President