

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

FIRST SECTION

CASE OF GORŠE v. SLOVENIA

(Application no. 47186/21)

JUDGMENT

Art 6 §§ 1 and 2 (criminal) • Impartial tribunal • Presumption of innocence • Applicant's conviction of abuse of office and money laundering by a court panel whose presiding judge, before the beginning of the trial, accepted two co-defendants guilty pleas to charges of aiding and conspiring with him to commit those offences • Judgments approving the co-defendants' guilty plea agreements contained detailed factual description of criminal conduct attributed to the applicant and referred to him, in their operative part, as being the "perpetrator" of the offence of abuse of office • Legal assessment made of applicant's actions when he was not yet tried • Inadequate efforts to avoid creating the impression that the applicant had already been found guilty • Impugned judgments prejudicial to the applicant's right to be presumed innocent until proven guilty • Legitimate reason to fear presiding judge's impartiality • Higher courts' failure to remedy procedural defects of the first-instance proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 March 2025

FINAL

06/06/2025

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



In the case of Gorše v. Slovenia,

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

Ivana Jelić*, President*,
Erik Wennerström,
Marko Bošnjak,
Alena Poláčková,
Georgios A. Serghides,
Raffaele Sabato,
Alain Chablais*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 47186/21) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Brane Gorše ("the applicant"), on 20 September 2021;

the decision to give notice to the Slovenian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 11 February 2025,

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

INTRODUCTION

1. The case concerns criminal proceedings against the applicant in which he was convicted of, *inter alia*, abuse of office and money laundering by a judge who, before the beginning of the trial, had accepted the applicant's two co-defendants' pleas of guilty to charges of aiding him to commit the offence of abuse of office and of conspiring with the applicant to commit the offence of money laundering. The case raises issues under Article 6 §§ 1 and 2 of the Convention.

THE FACTS

2. The applicant was born in 1960 and lives in Ljubljana - Šentvid. The applicant was represented by Mr D. Ljubič, a lawyer practising in Ljubljana.

3. The Government were represented by their Agent, Mrs A. Vran.

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

5. The applicant was a lawyer and a licensed insolvency practitioner. He was detained on 13 February 2013 and charged with business fraud, abuse of office and money laundering arising from his performance as the liquidator of an insolvent company, H.K. Several other individuals were charged in relation to the same events.

6. In October 2013, the applicant's two co-defendants, P.K. and S.S., entered into a guilty plea agreement with the State Prosecutor's Office, admitting guilt for aiding an offence of abuse of office and for committing an offence of money laundering.

7. On 12 November 2013, the Koper District Court, Judge J.G., sitting as a single judge, held a preliminary hearing during which the guilty plea agreements were read. The court accepted the defendants' admission of guilt (*priznanje krivde)* (hereinafter also "guilty plea") and the guilty plea agreements (*sporazum o priznanju krivde)*. It found that the defendants understood the legal nature and consequences of their admissions, and that the admissions were given voluntarily, clearly, and completely and were supported by other evidence in the file. On the same day the court delivered the judgments against P.K. and S.S., which were based on their admissions, and determined their penalties. The judgments against P.K. and S.S. explained the criminal activities of the co-defendants and others, including the applicant, in some detail and stated that P.K. and S.S. had intentionally aided the applicant to commit the offence of abuse of office and that they had conspired with him to commit the offence of money laundering. Most notably, the operative parts of the verdicts stated that P.K and S.S, acting in the name of certain companies, had been found to have "intentionally aided Brane Gorše in the commission of the criminal offence [of abuse of office] by agreeing to cover up the fact that he was a new creditor of company H.K., which was insolvent". They furthermore stated that P.K. and S.S., together with certain other individuals, "disposed of financial assets which they knew had been acquired through the commission of the criminal offences [of, *inter alia*, the abuse of office] of which Gorše was a perpetrator..."

8. On 14 November 2013 a preliminary hearing was held in respect of the applicant, before Judge J.G. The applicant declared that he would not admit guilt. On the same day his representative asked for Judge J.G., who had accepted the guilty plea by P.K. and S.S., to be recused under section 39(1)(6) of the Criminal Procedure Act (hereinafter "the CPA", see paragraph 22 below), arguing that the acceptance of the guilty plea from the alleged accomplices and co-perpetrators necessarily presupposed that the applicant had committed the alleged criminal acts as the principal perpetrator, even though the trial against him had not even begun.

9. On 15 November 2013 the president ad interim of the Koper District Court rejected the request for recusal, saying that Judge J.G. had conducted the proceedings in a lawful manner and that there was no indication that he had decided that the applicant was guilty. She also said that the applicant's mere subjective opinion, which was not supported by any specific facts that would raise objective doubts about the impartiality of Judge J.G., could not justify his recusal.

10. During the trial, which was held before a panel composed of Judge J.G. as presiding judge and two lay assessors, the applicant denied

committing the alleged crimes. In the course of the proceedings the court examined thirty-eight witnesses and heard two expert opinions. Part of the evidence was the examination of P.K. and S.S. as witnesses. On 15 April 2014 the applicant was convicted of the criminal offences of business fraud, abuse of office and money laundering and was sentenced to ten years in prison and a fine. Several other co-defendants were also convicted of money laundering. The judgment, which runs to 143 pages, makes references to P.K.'s and S.S.'s admission of guilt by noting, for instance, as follows:

> "... it should again be pointed out that S.S. and P.K. had admitted guilt on the criminal charges, and the court finds, based on the evidence gathered, that P.K. clearly accepted that her company, O, [...] would buy claims from the creditors as a [sham] (*formalno*)..."

> "Here, it should be pointed out again that the defendant S.S. had admitted to committing the crimes she was accused of at the preliminary hearing, as had P.K. It also cannot be argued that P.K. admitted [guilt] only to avoid going to prison or that S.S. did so because of illness, as their admissions are corroborated by other evidence in the file."

11. On 21 July 2014 the applicant appealed, arguing, *inter alia*, that the proceedings had been conducted unlawfully as Judge J.G. should have not presided at his trial. In the applicant's submission, Judge J.G.'s accepted P.K.'s and S.S.'s guilty plea agreements based on the assumption that he had in fact committed the alleged criminal offence, even though the proceedings against him had not even started. He emphasised that he had been categorised as a "perpetrator" of the predicate criminal offence from which the "dirty money" had originated.

12. On 28 November 2014 the Koper Higher Court partially granted the appeal, acquitting the applicant of the charge of business fraud and partially of the charge of abuse of office. However, it dismissed the remaining parts of the appeal, including the complaint concerning the request for the recusal of Judge J.G. It held that although the judge had examined the file and formed an opinion as regards the guilty pleas prior to the trial, he had nonetheless assessed all the evidence about the defendants who had not pleaded guilty during the trial against them. The judge's role was to reach a verdict on those defendants based only on evidence examined during the trial against them, and the evaluation of guilt was to be done individually for each defendant. Accepting guilty pleas from some defendants did not mean the judge could not be impartial towards other defendants, and the trial could still yield different conclusions on the guilt of those who had not pleaded guilty at the preliminary hearing.

13. On 14 January 2015 the applicant sought a review before the Supreme Court (by way of the application for the protection of legality), in which he reiterated that Judge J.G. should have been recused following his acceptance of P.K.'s and S.S.'s guilty pleas. The applicant argued that in cases of crimes by a secondary party, such as aiding a criminal offence, a judge's acceptance of a guilty plea agreement necessarily implied his or her view that the crime had been committed by the accused as a principal. A secondary party could

not be held criminally liable without the crime being committed or at least attempted by a principal. Furthermore, the charge of money laundering implied manipulation of "dirty" money, acquired through a predicate offence, which in this case was attributed, prior to his trial, to the applicant.

14. On 14 April 2016 the Supreme Court partially granted the application for protection of legality, removing certain counts from the conviction for money laundering, and rejected the remainder of his application. The applicant therefore remained convicted of money laundering and abuse of office and was ultimately sentenced to imprisonment of four years and two months and a fine. As regards the applicant's complaint about Judge J.G.'s alleged lack of impartiality, the Supreme Court held that section 39(2)(3) of the CPA (see paragraph 22 below) was not applicable to the situation in question. It furthermore referred to the reasons given by the Koper Higher Court and noted that the situation of the applicant was comparable to its earlier judgment in a case concerning the acceptance of a guilty plea by co-defendants who had participated in the same robbery as a co-defendant who did not admit guilt (see paragraph 33 below). In the Supreme Court's view, where a judge's conduct was in line with the provisions of the CPA, it could not, from the point of view of section 39(1)(6) of the CPA (see paragraph 22 below), give rise to doubts about the judge's impartiality.

15. On 14 July 2016 the applicant filed a constitutional complaint about the judgment of the Supreme Court as well as a petition for the review of the constitutionality of certain provisions of the Criminal Code arguing, *inter alia*, that those subsections were not compliant with the principle of legality. As regards the complaint concerning Judge J.G.'s alleged lack of impartiality, the applicant reiterated his argument that the judgments against P.K. and S.S. implied a prejudgment of his own guilt and that there was an inevitable link between the criminal offences of which he had been accused and those of which P.K. and S.S. had been accused. In his view, the relationship between several principals who committed a crime together was different from that between secondary parties and a principal. A judge who accepted a guilty plea from a secondary party was operating under an assumption that the principal crime has been committed. The same applied to the connection between the crime of money laundering and the predicate crime from which the "dirty" money originated. In the applicant's submission, the procedure in the present case gave an impression of bias, in both the subjective and objective sense.

16. On 7 May 2021 the Constitutional Court decided not to accept the constitutional complaint for consideration and rejected the applicant's petition for the review of constitutionality.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGISLATION

17. Sections 285a to 285d of the Criminal Procedure Act ("the CPA"), which had come into force on 1 January 1995 but was subsequently amended many times, govern the preliminary and final sentencing hearing in a criminal case. After the indictment becomes final, the president of the panel schedules a preliminary hearing, where the defendant enters a plea. As a rule, different forms of participation in the same crime are dealt with in a single process (section 32(4) of the CPA). However, under section 285a(5), if there are multiple co-defendants the preliminary hearing can be conducted with each defendant separately.

18. If a defendant pleads guilty as charged, the president of the panel must decide whether to accept the guilty plea. The president of the panel may only accept a guilty plea if all the following conditions are met:

- the defendant has understood the nature and consequences of the plea;
- the guilty plea was entered of his or her own free will;
- the guilty plea was clear and complete and supported by other evidence in the file; and
- the judge is convinced, on the basis of evidence in the court file, that the defendant has committed the criminal offence for which he or she was indicted and that there are no circumstances that would exclude the defendant's guilt.

19. At the request of the parties and if the president of the panel finds that all the conditions have been met, the sentencing hearing may be held immediately after the guilty plea has been accepted. Section 285č(6) of the CPA provides that the rules about ordinary judgments apply *mutatis mutandis* to judgments based on a guilty plea, except as regards giving reasons for the finding of guilt, which are limited to a statement that the defendant pleaded guilty before the president of the panel who accepted the plea entered.

20. The CPA also provides for the situation in which the parties conclude a guilty plea agreement (see sections 450a to 450č of the CPA). The validity of the agreement is decided on by the court at the preliminary hearing or, if the agreement was concluded subsequently, at the main hearing. The procedure for dealing with a guilty plea apply to such agreements *mutatis mutandis*.

21. Under section 3 of the CPA, anyone accused of a criminal offence is presumed innocent until his or her guilt is established by a final judgment, and the court may convict the accused only if it is convinced of his or her guilt. As submitted by the Government, the president of the panel may therefore only accept a guilty plea agreement if he or she is convinced beyond reasonable doubt on the basis of the evidence as a whole that the accused person has committed the act which is the subject of the guilty plea agreement

and that no circumstances exist that make it impossible that the accused person could be guilty.

22. As regards the recusal of judges, section 39 (entitled "exclusion") provides as follows:

> "(1) A judge or lay assessor may not perform judicial duties:
>
> ...
>
> 4) if he in respect of the same matter has [already] acted as a prosecutor, defence lawyer, ... [or] representative, or has been examined as a witness or an expert;
>
> 5) if he took part in making a lower court's decision in respect of the same matter or took part at the same court in making a decision [that was subsequently] challenged by an appeal or by an application for the protection of legality;
>
> 6) if circumstances exist that give rise to doubts regarding his impartiality."
>
> (2) A judge or lay assessor may not decide on charges ...:
>
> ...
>
> 3) if he has [already] issued a decision that an admission of guilt [of the offence in question] should be dismissed (under section 285.c(2)) or that an agreement based on the admission of guilt should be dismissed ..."

23. Under section 354(1) of the CPA:

> "The judgment may only relate to the person who is charged and to the offence which is the subject of the charge as specified in the indictment filed or amended or extended at the main hearing."

24. Under sections 420 and 421 of the CPA, an accused person may apply for a review of a final judgment by lodging an application for protection of legality within three months from the date of a judgment of the European Court of Human Rights in which the Court has found that the final judgment entailed a violation of the Convention or one of its Protocols.

II. CASE-LAW OF THE SLOVENIAN SUPERIOR COURTS

A. Constitutional Court

25. In its decision no. Up-57/14 of 26 January 2017 the Constitutional Court held as follows:

> "The fact that a judge has previously tried the co-defendants in criminal proceedings for the same offence does not in itself give rise to sufficient grounds to doubt the judge's impartiality in subsequent criminal proceedings against the appellant. There should be an assessment of whether in the circumstances of the particular case the doubt as to the judge's impartiality is objectively justified."

26. The Constitutional Court observed that in the case in question (which concerned a criminal offence with several accused, whereas the proceedings against the appellant had been severed) it was essential to determine whether the earlier judgment against the co-defendant contained an assessment of

specific actions by the appellant on which the court had gone on to decide in the subsequent proceedings against him. In this decision, the Constitutional Court held that the earlier judgment contained an assessment of specific actions of the appellant which were the subject of the subsequent judgment and that therefore, in the judgment against the co-defendant, the court had prejudged the appellant's guilt in the subsequent criminal proceedings. The Constitutional Court concluded that the appearance of impartiality of the court in the subsequent criminal proceedings against the appellant, which had been severed from the proceedings against his co-defendants, had been impaired to such an extent that the trial could not be considered to have been impartial.

27. The Constitutional Court dealt with, *inter alia*, the question of the judge's impartiality in the context of the admission of guilt by co-defendants in its decision of Up-709/15 and Up-710/15 of 9 October 2019. The relevant part of that decision was summarised in *Škoberne v. Slovenia*, no. 19920/20, § 54, 15 February 2024.

28. On 20 November 2024, the Constitutional Court upheld (in cases, Up-1038/21 and Up-1044/21) a complaint alleging a violation of the right to an impartial court, filed by one of the appellants (hereinafter referred to as "the appellant"). The complaint arose from the appellant's conviction for a corruption-related offence involving several alleged co-participants. The presiding judge of the panel that convicted the appellant had previously convicted the appellant's co-accused after guilty plea agreements. These prior judgments detailed the appellant's actions and included legal characterisation of his conduct. The Constitutional Court noted a significant rise in cases where criminal courts successively heard separate proceedings involving defendants who had initially been charged together. Considering this trend and recent case law from the Court and the Court of Justice of the European Union, the Constitutional Court stressed the need for clearer guidelines on, *inter alia*, when and how criminal courts may refer to the actions of co-defendants (who are yet to be tried) in judgments that do not concern them.

29. The Constitutional Court held that it does not violate the principle of the presumption of innocence for a criminal court to refer to the role in the facts of an offence of suspects who are to be tried separately, provided that: (i) it is clear from the wording or context that the court does not consider these facts as having been established or proved, or (ii) the inclusion of such facts as established or proven is strictly necessary for determining the criminal liability of defendants who are being tried earlier for good reason, and the judgment explicitly states that the guilt of those who are yet to be tried has not been established. The Constitutional Court held that if a judge had violated the presumption of innocence of an individual in a prior judgment, he or she could not maintain the appearance of impartiality in subsequent proceedings involving the same individual and the same events.

30. The Constitutional Court further held, citing the Court's case law, that a judge's participation could be problematic from the perspective of impartiality if he or she had previously given a judgment which included details of the defendants' role in the crime, particularly if it included a legal description of their actions or implied that they had fulfilled all the elements of the offence. The greater the significance of the findings in the earlier proceedings, the higher the risk that the judge might seek to confirm them in subsequent trials. A judge cannot dispel doubts about her or his impartiality merely by stating in a prior judgment that it does not apply to the co-defendants who are yet to be tried or that their guilt has not been established. In such circumstances, ensuring the right to an impartial trial would generally require the judge involved in the earlier proceedings to not participate in the subsequent trial.

31. In the case under review, the Constitutional Court found that the earlier judgments against the appellant's co-defendants contained a detailed description of the appellant's role in the offence and characterised him as a co-perpetrator. This could reasonably have led the appellant to fear that the presiding judge, having given those earlier judgments, had already formed an opinion about his case and might incline towards reaching the same conclusion again. The fact that the earlier judgments were based on plea agreements did not alleviate this concern, as even in such cases the judge had to verify that the defendants had committed the offences with which they were charged, which – in the case under review – involved making findings as to how the appellant had participated in the offences. The Constitutional Court found that concerns about a lack of impartiality could not be set aside just because the judge was a professional, or because the appellant's case had involved extensive evidential procedures and there had been no direct reference to the prior judgments in the judgment on the appellant's conviction. The Constitutional Court emphasised the detailed description of the appellant's conduct in the earlier judgments and how close that description was to that in the subsequent judgment against the appellant.

B. Supreme Court

32. In its judgment no. I Ips 36893/2010 of 13 March 2014, the Supreme Court observed that the concept of "preliminary hearing" had been introduced into the CPA in 2012. After an indictment becomes final, the president of the panel schedules a preliminary hearing at which the defendant has the opportunity to enter a plea and the subsequent course of the criminal proceedings is determined accordingly. The Supreme Court further explained that the concept of a guilty plea agreement allowed for an exception to the general principle of criminal procedure according to which a conviction could only be pronounced if the truth of the alleged facts constituting the elements of a criminal offence had been confirmed by an adversarial procedure at the

main hearing. As the Supreme Court pointed out, a defendant's admission of guilt does not excuse the court from its duty to decide on legally relevant facts and does not affect the judge's substantive assessment of the acts alleged, that is, the assessment of whether the (admitted) objective and subjective facts constitute all the legal elements of a particular criminal offence and whether the defendant can be held liable for those acts. Section 354(2) of the CPA, which provides that a court is not bound by a prosecutor's proposal as to how actions should be characterised in law, also applies to a judgment based on a guilty plea.

33. In judgment no. I Ips 14015/2013 of 6 November 2014, the Supreme Court held that a judge's acceptance of the admission of guilt of co-accused at the preliminary hearing would not mean that he or she had prejudged the guilt of those co-accused who did not plead guilty in the further conduct of the hearing. It observed that the preliminary hearing is conducted according to a special set of procedural provisions of the CPA, which in terms of their content amount to preparation for the main hearing.

34. In judgment no. I Ips 44091/2016 of 16 July 2020, the Supreme Court held that the mere fact that a judge had accepted a guilty plea from some co-defendants was not in itself a reason for his or her recusal from proceedings against the remaining co-defendants. A judge is obliged to examine the guilt of each defendant separately based on the evidence produced during the trial. The Supreme Court held that the impartiality of a presiding judge is not called into question by the fact that the judge, prior to accepting the guilty pleas of co-defendants, has assessed whether their admissions were supported by other evidence in the file. In assessing whether a judge was impartial, it is not only their earlier decisions and the content of judgments given against co-defendants that are relevant but also the reasons given in the judgment for finding against the specific defendant in the subsequent trial. As regards the case under consideration (which concerned a number of individuals allegedly involved in drug trafficking, many of whom had pleaded guilty), the Supreme Court found that the lower courts' conclusions about the defendant's alleged criminal acts did not rely significantly on the admissions of guilt of the co-defendants, nor did the first-instance court refer to prior judgments against the co-defendants.

III. CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION ("THE CJEU")

35. The relevant case-law of the CJEU has been summarised in *Mucha v. Slovakia*, no. 63703/19, §§ 34-36, 25 November 2021. Furthermore, in its judgment of 18 March 2021 (*Pometon SpA v. European Commission*, C-440/19, EU:C:2021:214, § 63), concerning an alleged lack of impartiality on the part of the European Commission, the CJEU referred to the Court's case-law (in particular *Karaman v. Germany*, no. 17103/10, §§ 64-65,

27 February 2014) and stated that in complex criminal proceedings involving several persons who could not be tried together, references by the court to the participation of third persons, who might later be tried separately, might be necessary to the assessment of the guilt of those on trial. However, if facts related to the involvement of third parties had to be brought in, the court should avoid giving more information than was necessary for the assessment of the culpability of the defendants then before the court. In addition, reasons in judicial decisions had to be worded in such a way as to avoid prejudging the guilt of the third parties concerned and so potentially jeopardising the fairness of the separate hearing on the charges against them.

IV. COMPARATIVE LAW

36. The information available to the Court regarding the question of the recusal of judges who have previously delivered a judgment against a co-defendant of the accused included a comparative law survey covering thirty six member States of the Council of Europe, namely: Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the Republic of Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Poland, Portugal, Romania, San Marino, Serbia, the Slovak Republic, Spain, Sweden, Türkiye and the United Kingdom. The following could be observed from the survey.

37. In none of the surveyed States was a judge considered to be disqualified from presiding over a trial merely by virtue of his or her prior participation in the trial of an accused's co-accused. Legitimate doubts as to a judge's impartiality commonly arise in situations where the judge in question has already given his or her assessment of facts and evidence relevant to the subsequent trial of the co-accused in a previous judgment (for example, in Albania, Bulgaria, Georgia, Ireland, Latvia, Poland, the Netherlands, and Germany) and where a previous judgment contained findings or statements prejudging the guilt of the accused who was tried subsequently (for example, in Austria, Belgium, Bosnia and Herzegovina, Germany, Italy, Moldova and Türkiye).

38. It appears from the judgments of certain domestic courts that a reference to a defendant who is yet to be tried in a judgment concerning his co-accused, either in the findings of fact or in another part of the judgment, does not of itself indicate a lack of impartiality on the part of the judge (for example, in the Netherlands). The situation is different where the judge has made extensive findings of fact on the involvement of the defendant in the crime in an earlier judgment (for example, in Germany). In Italy, a judge is prevented from sitting if, for example, in a case involving participation in a criminal organisation, she or he has already (even indirectly) assessed the

criminal liability of the accused in an earlier judgment convicting alleged co-offenders of the accused. In Hungary, if the court establishes the criminal liability of only one perpetrator, the judgment delivered by that court must not name – even when setting out the facts – a defendant whose criminal liability has not yet been determined. In Iceland, it must be clearly stated in the previous judgment that its findings do not concern the issue of the guilt of the remaining defendant.

39. The above-mentioned considerations also apply to judges who have given judgments based on guilty plea agreements concluded with alleged co-offenders. In Bosnia and Herzegovina and Romania a judge who did that would be disqualified from sitting on subsequent cases if the references to the persons yet to be tried amount to an expression of their guilt.

40. The approach taken to the recusal of judges does not normally differ according to the type of the offence or the alleged roles of the co-accused. As regards the stage of the criminal proceedings at which a co-defendant pleads guilty, in Ireland and Bosnia and Herzegovina it seems that the issue of impartiality is less likely to arise where one of the co-defendants pleads guilty in pre-trial proceedings (that is, before the hearing and the giving of evidence in the trial of the remaining offenders).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

41. The applicant complained under Article 6 of the Convention that Judge J.G. had expressed his view on the applicant's guilt in the proceedings against P.K. and S.S., that is, before his trial had begun. He asserted that consequently Judge J.G. could have not been considered impartial.

42. The Court notes that the Government were invited to comment on the applicant's complaint with reference to the requirement of impartiality as well as the presumption of innocence enshrined in Article 6 §§ 1 and 2 of the Convention. The Court, which is the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), will examine the complaint from the standpoint of the above-mentioned provisions, which in so far as relevant read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

43. 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' arguments

44. The applicant argued that reference to him in the operative part of the judgments against P.K. and S.S, who had been accused of participating in the offences with which he had been charged, and the reasoning in these judgments, indicated that he was guilty of the charges on which he had yet not been tried. He explained that aiding and abetting did not constitute a principal act but a secondary or accessory action in the commission of the crime in question. In Slovenian legal doctrine, if there is no-one who is criminally liable for a crime as a principal, there can be no secondary liability of an aider or abettor. The principal perpetrator must commit or at least attempt to commit a criminal act for there to be any liability of a secondary party. In addition to the intention of the accessory to the crime, the intention of the principal party to the crime has to be established as well. The judgments by which P.K.'s and S.S.'s guilty plea agreements were accepted were therefore necessarily based on an assumption that the applicant had committed the crime in which P.K. and S.S. had participated. Not only did the judge have to decide on the applicant's guilt when accepting the guilty pleas of P.K. and S.S., his guilt was referred to in the verdict and also in the reasoning of the judgment against P.K. and S.S. His guilt, not his innocence, was therefore presumed from the start. The applicant furthermore pointed out that the judgment against him referred to the guilty plea of P.K. and S.S. on several occasions in order to strengthen the finding of his guilt.

45. The applicant also argued that the Slovenian case-law referred to by the Government and higher courts dealing with his remedies concerned accomplices in a broader sense and not aiders, and was therefore inappropriate.

46. The Government maintained that a judgment based on a guilty plea agreement or a guilty plea by some of the participants in a crime involving several parties usually also had to describe the actions of other participants. That would not be in any way contrary to the Court's case-law. The Government further submitted that although a judge who accepted a guilty plea or guilty plea agreement had to be convinced of the guilt of the person concerned, the assessment of evidence in such a situation was a qualitatively different process from the assessment of evidence made at the end of the trial. The judge had to decide on the guilt of and punishment for each defendant separately and that was the same in the present case. The reasoning of the

judgments against P.K. and S.S. did not mean that the first-instance court had taken a position on the applicant's actions in any way. The mere reference to the applicant in the descriptions of the actions as summarised in the operative part of the judgments against P.K. and S.S. could not be regarded as prejudging the applicant's guilt. Reference to the applicant would have been problematic had it been detailed and included an assessment of the applicant's guilt.

47. The Government asserted that both the reasoning in the earlier judgment and the proceedings against the applicant should be taken into account in assessing whether his trial was in compliance with Article 6. In the present case the domestic court had held fourteen public hearings, examined fifteen witnesses, read the witness statements of twenty-two witnesses, obtained expert evidence from two graphologists and considered numerous documents in the proceedings against the applicant and his co-defendants. The court's extensive reasoning shows that its findings were predominantly based on extensive documentary and other evidence and witness statements, including those of P.K and S.S. The reference to P.K.'s and S.S.'s guilty plea only supported the final assessment of evidence by the court. The Government's view was that when the reasoning of the judgment was taken as a whole, it did not suggest that the applicant's guilt had been prejudged.

48. The Government argued that other European countries dealt with guilty pleas in criminal cases where there were secondary parties in a manner similar to that of Slovenia. They further argued that accepting a guilty plea to a charge of abetting a crime could not automatically lead to the recusal of the judge who took that plea. Automatic recusals would significantly delay proceedings, particularly in complex cases against numerous co-defendants. There would also be a risk that time-limits for detention would expire and would have heavy costs implications.

2. The Court assessment

(a) Principles related to impartiality

49. General principles on impartiality, including those relating to impartiality in the context of a judge's participation in previous decisions on the same subject matter, have been set out in the Court's judgment in *Meng v. Germany*, (no. 1128/17, §§ 42-52, 16 February 2021). The Court would nonetheless note that in applying the subjective test, it has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see also *Morel v. France*, no. 34130/96, § 41, ECHR 2000-VI; *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII; and *Miminoshvili v. Russia*, no. 20197/03, § 113, 28 June 2011).

50. Regarding the objective test, the principles most relevant to the issue in the present case can be summarised as follows (see *Mucha v. Slovakia*, no. 63703/19, § 49, 18 March 2021):

- The mere fact that a trial judge has made previous decisions concerning the same offence cannot be held in itself to justify fears as to his impartiality. Likewise, the mere fact that a judge has already ruled on similar but unrelated criminal charges or that he or she has already tried a co-accused in separate criminal proceedings is not in itself sufficient to cast doubt on that judge's impartiality in a subsequent case.

- An issue as to the judge's impartiality arises, however, where the earlier judgment already contains a detailed assessment of the role of a person who has been charged in relation to an offence committed by several persons but who has not yet been tried and, in particular, where the earlier judgment contains a specific categorisation of the involvement of the applicant in the offence or a clear determination that the person yet to be tried had fulfilled all the criteria required to be found to have committed a criminal offence. Given the circumstances of the specific case, that would be seen to prejudge the issue of guilt of the person on trial in the subsequent proceedings and would thus lead to objectively justified doubts that the domestic court had a preconceived view of the merits of the defence of that person at the outset of his or her trial.

(b) Principles related to the presumption of innocence

51. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of a fair criminal trial that is required by paragraph 1 of that Article (see, among many other authorities, *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 103, ECHR 2014 (extracts)). Article 6 § 2 prohibits the premature expression by the tribunal of the opinion that the person "charged with a criminal offence" is guilty before he or she has been so proved according to law (see, among many other authorities, *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62, and *Peša v. Croatia*, no. 40523/08, § 138, 8 April 2010).

52. The Court reiterates in this connection that a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The use of language is of critical importance in this respect (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X; *Böhmer v. Germany*, no. 37568/97, §56, 3 October 2002; and *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008). The Court has further pointed out that whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of particular circumstances in which the disputed statement was made (see *Daktaras*, cited

above, § 43; *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005; and *Paulikas v. Lithuania*, no. 57435/09, § 55, 24 January 2017). When regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive. The Court's case-law provides some examples of instances where no violation of Article 6 § 2 has been found even though the language used by domestic authorities and courts was criticised (see *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, § 176, 11 June 2024, and *Allen v. the United Kingdom* [GC], no. 25424/09, § 126, ECHR 2013, and the cases cited therein).

53. The Court has recognised that in complex criminal proceedings involving several persons who cannot be tried together, references by the trial court to the participation of third persons, who may later be tried separately, may be unavoidable where the guilt of those who are on trial is being assessed. Criminal courts are bound to establish the facts of the case relevant for the assessment of the legal responsibility of the accused as accurately and precisely as possible, and they cannot present established facts as mere allegations or suspicions. This also applies to facts related to the involvement of third persons. However, if such facts have to be introduced, courts should avoid giving more information than is necessary for the assessment of the legal responsibility of those persons who are accused in the current trial (see *Karaman*, cited above, § 64, and *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 99, 23 February 2016; see also CJEU's case law, referred to in paragraph 35 above).

(c) Application of these principles to the present case

54. Having regard to the interconnected nature of the issues raised by the applicant, namely the alleged lack of impartiality of the presiding judge and the presumption of innocence, the Court will examine the two aspects together.

55. It notes that the applicant's complaint stems from the fact that Judge J.G., who was presiding over the panel that convicted him for, *inter alia*, abuse of office and money laundering, had previously convicted his co-defendants of participation in the commission of the same criminal offences on the basis of a guilty plea agreement, and that Judge J.G. had referred to the applicant's role in the offences of which the co-defendants were convicted when setting those offences out in his judgments against the co-defendants.

56. The Court observes that the court panel that convicted the applicant consisted of two lay assessors and Judge J.G., a professional judge. As a professional judge, Judge J.G. must be considered better trained and well able, given his experience, to disengage himself from the discussion and findings in the previous proceedings against P.K. and S.S. (see *Meng*, cited above, § 55). The Court, having regard to the material before it, also finds

that there is nothing to suggest that Judge J.G. acted with any personal prejudice in the proceedings against the applicant. Consequently, the judge's personal impartiality must be presumed (the subjective test, see paragraph 49 above). The Court further observes that in the proceedings against the applicant the court panel itself examined witnesses, experts and documentary evidence and that in its judgment convicting the applicant it was required to reach its own findings of fact and law based on the evidence examined in the proceedings against him (see paragraphs 10, 12, 21 and 23 above; compare also to *Mucha*, cited above, § 51).

57. However, while these are important elements in the examination of the question of whether the trial court met the requirement of impartiality under Article 6 § 1 in the applicant's case, they do not exempt the Court from examining whether the judgments against P.K. and S.S. contained findings that actually prejudged the issue of the applicant's guilt (see *Meng*, cited above, § 57, with further references) and undermined, in the objective sense, the impartiality of the judge who presided over the court panel which convicted the applicant.

58. In this connection the Court should examine two principal issues, namely whether it was necessary to refer to the participation of the applicant in the criminal offences for which P.K. and S.S. were convicted in the judgments against them, and, if so, whether that reference was limited to what was necessary for the finding of P.K.'s and S.S.'s guilt and was worded in such way so as to avoid any potential prejudice to the applicant (see paragraphs 52 and 53 above, see also *Mucha*, cited above, § 60). These questions arise even though the judgments against P.K. and S.S. were based on guilty plea agreements where these co-defendants pleaded guilty to specific offences (see *Mucha*, cited above, §§ 53-58, see also the comparative law referred to in paragraph 39 above).

59. The Court considers it to be primarily for Contracting States, in particular the national legislature, to decide on the most suitable procedure to be applied when charges against co-defendants who are alleged to have participated in the same crime are not decided simultaneously. States' approaches to this issue will likely depend on the particularities of the legal and court systems concerned and will relate to domestic criminal justice policy, and they may therefore differ, as can be seen from the comparative law data (see paragraphs 36-40 and 48 above). Nevertheless, regardless of what approach is taken, the national authorities' actions and decisions must conform with the requirements of the Convention.

60. The Court notes that in Slovenia as a general rule there is a unified procedure for cases where defendants are accused of different forms of participation in the same crime. However, if there are multiple co-defendants, the preliminary hearing can be conducted with each defendant separately. At the preliminary hearing, the defendant is invited to enter a plea and the guilty plea agreement, if any, is examined (see paragraph 17 above). A guilty plea

agreement or admission of guilt, if they are accepted, result in a criminal conviction (for a similar situation see *Mucha*, cited above, § 54). Where a case is resolved in this way, the court publicly delivers a judgment setting out both facts and law, and the operative part of the judgment is formulated in the same manner as in any other judgment – in particular, including a finding that the defendant was responsible for the action (or omission) in question and so committed the offence of which he or she was accused. Where only some of a number of co-defendants who have allegedly participated in the commission of a criminal offence enter into a guilty plea agreement, the judge who accepts that agreement by pronouncing the judgment convicting those co-defendants is, under domestic law, not precluded from presiding over the panel which tries the other co-defendants who are alleged to have participated in the same criminal offence (see paragraphs 18, 20, 22, and 32-34 above).

61. As to the circumstances of the present case, the Court notes that in view of the nature of the offences of which P.K. and S.S. were accused, a reference to third parties and to the role allegedly played by the applicant may have been unavoidable when setting out the facts of their offence (see paragraph 7 above). It remains to be determined whether, regard being had to the level of detail and the wording used, that reference to the applicant undermined the guarantees of Article 6 §§ 1 and 2 (see paragraphs 50, 52 and 53 above).

62. The Court notes in this connection that the judgments approving the applicant's co-defendants' guilty plea agreements contained a detailed factual description of their crimes, including the applicant's role in them, and a factual description of criminal conduct that was attributed to the applicant (see paragraph 7 above). Although those judgments did not contain any explicit separate finding of the applicant's guilt, they stated in their operative part that P.K. and S.S. had intentionally aided the applicant in the commission of the criminal offence of abuse of office and that they, together with certain other individuals, had disposed of financial assets which they knew had been acquired through the commission of the criminal offences of which the applicant had been "a perpetrator" (see paragraph 7 above). The court panel therefore appeared to have made a legal assessment of the applicant's actions, when he was yet to be tried in court.

63. The Court finds it particularly important to note that the disputed judgments not only contained a factual description of the applicant's alleged role but also referred to him, including in their operative part, as the person who had committed the criminal offence of abuse of office, which at that point remained only a criminal accusation in so far as he was concerned. The reference to his being the "perpetrator" of that offence leaves no room for doubt as to what the court was saying. The applicant's full name was given and the references to him were not worded so as to indicate that at that point he merely stood accused and was being prosecuted in separate criminal proceedings (contrast *C.O. v. Germany*, no. 16678/22, § 68, 17 September

2024). No explanation to the effect that his guilt had not been legally established appears in the reasoning of the judgments convicting P.K. and S.S. or anywhere else (see *Mucha*, cited above, § 60, and the case-law of the CJEU referred to in paragraph 35 above: contrast *Karaman*, cited above, §§ 69 and 70). Having regard to the foregoing, particularly the reference to the applicant as the perpetrator of the offence in question and the detailed description of his conduct clearly indicating that he had committed that offence in the judgments against P.K. and S.S., the Court is not persuaded that adequate efforts were made to avoid, in so far as possible, creating the impression that the applicant had already been found guilty (contrast, *Karaman*, cited above, § 70).

64. In view of the above, the judgments against the applicant's co-defendants were prejudicial to the applicant's right to be presumed innocent until proven guilty. The Court observes moreover that while it is understood that the assessment of evidence supporting a judgment based on a guilty plea agreement differs qualitatively from that conducted at the conclusion of a regular trial, where the verdict is reached based on the entirety of the evidence presented (see paragraph 46 above), Judge J.G. was nevertheless required to examine the evidence against P.K. and S.S. and reach the conclusion that they had committed the criminal offences concerned in the guilty plea agreements on the basis of that material (see paragraphs 7, 18, 21 and 32 above). The Court considers it unnecessary to examine the reference made to P.K.'s and S.S.'s guilty plea agreements in the judgment against the applicant (see paragraphs 10, 44 and 47 above) and finds that the applicant had a legitimate reason to fear that Judge J.G., who ultimately convicted him (contrast, *mutatis mutandis*, *C.O. v. Germany*, cited above, § 69), lacked the required impartiality because of the reference he had made to him in the judgments against P.K. and S.S. The Court would emphasise in this respect that even appearances may be of a certain importance, or in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence that courts in a democratic society must inspire in the public (see, among many, *Beg S.p.a. v. Italy*, no. 5312/11, § 132, 20 May 2021, and *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015)

65. Lastly, the Court notes that the domestic courts dealing with the applicant's applications for remedies did not quash the trial court's judgment because of the breaches of the Convention which the Court has found in this case. In examining the applicant's applications for remedies, the Koper Higher Court and the Supreme Court essentially limited their assessment to observing that the trial court had been obliged to reach its verdict on the applicant's guilt on the basis of the evidence examined in the trial against him (see paragraph 12 above) and that Judge J.G.'s conduct was compliant with domestic law (see paragraph 14 above). However, these considerations failed to engage with all the applicant's arguments and did not examine important aspects of the alleged breach of the requirement of impartiality (see

paragraphs 11, 13, 56 and 57 above). Despite this and although it had previously examined similar issues (see paragraphs 26 and 27 above), the Constitutional Court decided not to accept the applicant's constitutional complaint for consideration (see paragraph 16 above). The Court observes that a recent decision of the Constitutional Court (see paragraphs 28 to 31 above) reflected heightened concern for the protection of a defendant's right to an independent tribunal and the presumption of innocence in situations such as that of the present case – a development that is indeed welcomed. However, it remains true that, in the present case, the superior national courts failed to remedy the procedural defects of the first-instance proceedings (see *Meng*, cited above, § 64, and references therein).

66. There has accordingly been a violation of Article 6 §§ 1 and 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

68. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage, partly for the delay in the Constitutional Court proceedings. He did not make a claim in respect of pecuniary damage, submitting that he planned to have his case reheard if a violation was found.

69. The Government considered that the claim in respect of non-pecuniary damage was unfounded. They submitted that a finding of a violation should be considered to constitute sufficient just satisfaction.

70. Where, as in the present case, a person is convicted in domestic proceedings that have entailed breaches of the requirements of Article 6 of the Convention, the Court has held that the most appropriate form of redress would, in principle, be a retrial or the reopening of the case, at the request of the interested person (see, among other authorities, *Otegi Mondragon and Others v. Spain*, nos. 4184/15 and 4 others, § 74, 6 November 2018, and *Sejdovic v. Italy* [GC], no. 56581/00, § 126, ECHR 2006-II). In this connection, the Court notes that sections 420 and 421 of the Slovenian Criminal Procedure Act give a defendant an opportunity to request a review of a final domestic judgment within three months from the date of the Court judgment finding a violation of the Convention or one of its Protocols (see paragraph 24 above).

71. Having said that, the Court accepts that the events leading to the violations found in the present case caused the applicant non-pecuniary damage that cannot be made good by the mere finding of a violation (see, *mutatis mutandis*, *Zhang v. Ukraine*, no. 6970/15, § 83, 13 November 2018, and *Carmel Saliba v. Malta*, no. 24221/13, §§ 84-85, 29 November 2016). The Court, making its assessment on an equitable basis, awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

72. The applicant also claimed EUR 2,196 for the costs and expenses incurred before the Court.

73. The Government suggested that the decision on this be taken in line with the Court's case-law.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant's claim in full, that is, EUR 2,196, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 2 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,196 (two thousand one hundred and ninety-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić 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.

CONCURRING OPINION OF JUDGE SERGHIDES

1. The reason for writing this concurring opinion is to explain the rationale behind my position in finding that there has been a breach of both the Article 6 § 1 guarantee regarding the impartiality of the trial court and the Article 6 § 2 guarantee concerning the presumption of innocence, instead of considering it sufficient to find only one violation on the ground that there was no impartial "tribunal".

2. According to the established case-law[1], with the exception of isolated instances[2], when the Court finds a violation of Article 6 on the grounds that there was no independent or impartial "tribunal", it considers it unnecessary to address any other complaint under Article 6 of the Convention. This is due to the fundamental importance that the Court attaches to the institutional guarantees in Article 6 § 1. As I have argued elsewhere[3], in my humble view, pursuant to the underlying and overarching Convention principle of effective protection of human rights – the principle of effectiveness – the Court must attribute the requisite weight and consideration to the consequences of breaching the institutional guarantees. This can be done by automatically declaring the violation of an institutional guarantee without needing to address any other complaint.

3. What makes this case differ from the other cases where the Court deemed it sufficient to find a violation on the grounds of a lack of impartiality of the "tribunal" without examining other complaints under Article 6, is that the breach of both guarantees, namely, under Article 6 § 1 and under Article 6 § 2, sprang simultaneously from the same facts and are closely interlinked. The applicant was convicted of offences by a judge who, before the beginning of the trial, had accepted the applicant's two co-defendants' guilty pleas to charges of aiding him to commit the offences. The link with the presumption of innocence was that the acceptance of the guilty pleas by the alleged accomplices and co-perpetrators necessarily presupposed that the

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[1] See, *inter alia, Çiraklar v. Turkey*, no. 19601/92, §§ 44-45, 28 October 1998, and *Ergin v. Turkey (no. 6)*, no. 47533/99, §§ 55-56, 4 May 2006. See also Ryan Goss, *Criminal Fair Trial Rights – Article 6 of the European Convention on Human Rights* (Hart Publishing, 2016), E.4.1, at pp. 160-162.

[2] See *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023, where the Court having found a breach of the principles of equality of arms and adversarial proceedings under Article 6 § 1 held that there was no need to examine the admissibility and merits of the applicant's complaint that he had not been tried by an independent and impartial tribunal. In that case, in my partly concurring, partly dissenting opinion, I criticised this approach but also observed that that the complaint regarding the lack of an independent and impartial tribunal was inadmissible. I therefore proceeded to examine the complaint concerning the breach of the guarantees of equality of arms and adversarial proceedings and ultimately found a violation of Article 6 § 1.

[3] See paragraph 8 of my partly dissenting opinion in *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020.

applicant had committed the alleged criminal acts as principal perpetrator, even though the trial against him had not even begun. Though there was a request for recusal of that judge, it was not accepted.

4. The Court in paragraph 54 of its judgment makes it clear that the reason it examines the two aspects together is their "interconnected nature". In paragraph 64 of the judgment the Court also clarifies that the domestic judgments against the applicant's co-defendants were "prejudicial to the applicant's right to be presumed innocent until proven guilty". Consequently, the Court did not, as it has done in other cases, consider it unnecessary to deal with another complaint, namely, the complaint relating to the presumption of innocence, once it had dealt with the impartiality complaint, but proceeded to find that there had been a violation of Article 6 § 2 as well. This is simply because it had decided to examine the two complaints together (paragraphs 42 and 54).

5. The present judgment does not undermine the importance of the institutional guarantee of an impartial "tribunal", but, on the contrary, that guarantee is enhanced, in the circumstances of the case.