CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51277/99
by Hasan KRASNIKI
against the Czech Republic

The European Court of Human Rights (Second Section), sitting on 14 September 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 2 September 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Hasan Krasniki, is a citizen of the Former Yugoslav Republic of Macedonia who was born in 1971 and lives in Skopje. He was represented before the Court by Mr D. Strupek, a lawyer practising in Prague. The Government were represented by their Agent, Mr Vít Schorm from the Ministry of Justice.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 24 April 1997 the applicant was accused of having committed the crime of unauthorised production and possession of narcotics and poisons between January and April 1997, contrary to Article 187 § 1 of the Criminal Code as in force at the material time.

According to the Government, a witness using the fictitious name "Jana Charvátová" was examined for the first time on 24 April 1997, having been contacted by the police in connection with the investigation into the applicant's criminal activities. The witness said, *inter alia*, that "she wants to testify because she knows what heroin can do and that she wants Teplice to be free of drug dealers".

The applicant states that the record of the interview in his criminal file is not a protocol signed by the witness, but a so-called official record *(úřední záznam)* drawn up and signed by the police officer afterwards. He further maintains that it is not clear from that record whether "Jana Charvátová" was examined and the report drawn up before or after the applicant was charged. According to the applicant, such an official record could not serve as evidence in the criminal prosecution.

In the course of the pre-trial proceedings the applicant denied his guilt, stressing that he was a heroin addict and that the drugs found in his possession were for his own use only. "Jana Charvátová" and another witness using the fictitious name "Jan Novotný" were questioned by the Nymburk District Investigation Office *(okresní úřad vyšetřování)* on 11 July 1997. The applicant's lawyer attended the interrogation; the applicant was not present. Witness "Jana Charvátová" said that she did not know anybody with the applicant's surname and that in winter 1996 she had bought narcotics from a person called "Hasan", describing him as a man of about 170 cm tall, slim, with short blond hair. She had not seen him since. She was shown a photograph-album and asked to examine the photographs therein. She stated that she knew the person in photograph number five (that of the applicant), but did not know his name. She also stated that "Hasan", a person different from the applicant and from whom she had also been buying drugs, was not in any of the photographs. In reply to a question put by the applicant's lawyer, the witness said that she was giving evidence as a secret witness because she owed money for drugs. In reply to a further question as to whether the persons to whom she had owed money had ever threatened or beaten her, she replied that a Yugoslav to whom she had owed money for drugs had beaten her up and that there had been similar such incidents.

According to the applicant, the chronology of the examination of "Jana Charvátová" was as follows: the witness was asked about Hasan Krasniki

and therefore she started to speak about a person called Hasan first. She described him and after that she was shown the photograph-album and then incidentally mentioned that she knew most of the persons shown in the photographs including the applicant. Where in the official record of the interview it was stated that "Jana Charvátová" was heard regarding Mr. Hasan Krasniki known as "Jura" or "Džuro", during the examination of 11 July 1997, "Jana Charvátová" said that "Džuro" was depicted on photograph number one.

Being presented with a photograph-album, "Jan Novotný" said he recognised the man in photograph number five as "Džuro" from whom he had been buying heroin during the first four or five months of 1997. He described him as a man of about 25 years old, about 170 cm tall, slim, with short blond hair. He also said that "Džuro" had been "*here*" four years ago and that he had "*reappeared*" at the beginning of 1997, and that he had sold heroin at least twenty times to him. Counsel asked the witness why the latter was so afraid and why he wished to remain anonymous. In reply, the witness stated that Yugoslavs were a temperamental nation, that they had threatened him when he wanted to buy drugs from someone else and that he had been concerned about the security of his family. To the counsel's question whether the person in photograph number five had ever threatened him, the witness replied in the negative.

The police case file was sent to the Teplice District Prosecutor's Office *(okresní státní zastupitelství)*, which on 12 September 1997 filed an indictment against the applicant with the Teplice District Court *(okresní soud)*. The prosecutor charged the applicant with having distributed heroin in Teplice during the period between January 1997 and 23 April 1997 and with having sold at least twenty packets each containing 0.5 grams of heroin to "Jan Novotný" and with having sold the same drug to "Jana Charvátová". The District Prosecutor suggested that the two anonymous witnesses as well as witnesses K. and S. be heard at trial and that the police records on the photograph-based recognition of the applicant be read out.

On 18 November 1997 the applicant's trial began before the District Court. The applicant pleaded not guilty. According to the investigating authorities, at the time of the hearing anonymous witness "Jana Charvátová" could not be found at her home. Pursuant to Article 211 § 2(a) of the Code of Criminal Procedure, her witness statement was read out.

Applying Article 209 § 1 of the Code of Criminal Procedure, the presiding judge heard anonymous witness "Jan Novotný" outside the courtroom and out of sight of the applicant and his counsel who were able to put questions to the witness through the presiding judge. The witness stated that the applicant was the person who had sold drugs to him and that he had bought heroin from the applicant sometime at the beginning of 1997. When giving his testimony, the witness also stated that he was cured and was no longer addicted to any drug. In reply to several questions put by the

applicant's lawyer, the witness stated that the applicant had sold drugs some time ago. He then disappeared and had started selling them again in 1997. He also said that he had been buying drugs from the applicant during a one-month period 1997 and that he had seen him selling heroin to other people during the first three months of 1997. He described the applicant as a man of about 175-180 cm in height, slim with straight dark hair. He added that, unlike at present, he had not been good at recalling the colour of hair at that time. In reaction to the anonymous witness' testimony, the applicant claimed that it was not true. The court adjourned the proceedings until 25 November 1997 with a view to summoning "Jana Charvátová". The police were ordered to bring her before the court.

The police did not succeed in bringing the anonymous witness before the court on 25 November 1997.

Another hearing was held on 9 December 1997. The presiding judge read out a police report stating that "Jana Charvátová" had not been found at her address and could not therefore be summoned. The trial was adjourned for the purpose of locating the witness.

On 14 January 1998 the District Court, after having informed the parties about the police reports of 9 and 17 December 1997 on the unknown whereabouts of "Jana Charvátová", and having then read out the latter's statement from the pre-trial police records, found the applicant guilty of the unauthorised production and possession of narcotics and poisons. The applicant was sentenced to two years' imprisonment and expulsion from the Czech Republic for an unlimited period of time. The court held that, from January 1996 to 23 April 1997, the applicant had been selling heroin in "small envelopes". He had sold at least twenty "envelopes" of heroin to "Jan Novotný" and on a number of occasions during this time he had also sold heroin to "Jana Charvátová".

The applicant maintained that he had not been in the Czech Republic at the relevant time and that the drugs found in his possession had been for his personal use.

The District Court based its finding of guilt exclusively on the testimonies of the two anonymous witnesses. It stated that the concealment of their identities prior to their interview in order to safeguard their security was warranted under Article 55 § 2 of the Code of Criminal Procedure, having regard to the seriousness of the criminal offence at issue and the witnesses' fear of testifying in open court.

The District Court stated that anonymous witness "Jan Novotný" had stated that he had bought at least twenty "envelopes" of heroin from the applicant and that he had recognised the latter from photographs, both in the pre-trial proceedings and at trial, as the person who had been selling heroin not only to him, but also to other persons.

As regards the other anonymous witness "Jana Charvátová", the District Court referred to the police report stating that the witness could not be

found at her place of residence and that the search for her had been unsuccessful. It stated that she had testified in the pre-trial proceedings in the presence of the applicant's counsel and had said that she had been buying heroin from the applicant whom she had recognised from photographs.

The court also had regard to a photocopy of the applicant's passport, finding that he had arrived in the Czech Republic on 17 March 1997 from Bulgaria. It stated that, according to an expert psychiatric report, the applicant was, *inter alia,* a drug addict who should have been aware of the dangerousness of his criminal activity for society and could have controlled his conduct. An expert examination of the substance found on the applicant indicated that it was heroin.

The court, having assessed all the relevant evidence, held that the testimonies of the anonymous witnesses were trustworthy and consistent and that they incriminated the applicant. It also stated that the witness "Jan Novotný" had recognised the applicant in both the trial and pre-trial proceedings. It concluded that the evidence adduced by the applicant - the copy of the applicant's passport and a plane ticket showing that the applicant was not in the Czech Republic for most of the period during which he was alleged to have committed the offence - was not sufficient to rebut the strength of the case against him.

On 2 February 1998 the applicant appealed against the District Court's judgment. He claimed that he had not committed any criminal offence. He maintained that the heroin found in his possession had been for his personal use only. He also challenged the District Court's reliance on the testimonies of the anonymous witnesses, noting that the latter's statements had been misused to his detriment in the criminal proceedings. The applicant further complained of the failure of both the investigating authorities and the District Court to resolve material contradictions in the testimonies of the two anonymous witnesses.

On 9 March 1998 the Ústí nad Labem Regional Court *(krajský soud)* rejected the applicant's appeal. It found that the applicant's objection to the use of secret witnesses was unsubstantiated. It stated that both anonymous witnesses had been interviewed in the course of the pre-trial proceedings and that the testimony of witness "Jana Charvátová" had been read out at trial because she could not be located at her home. The court further noted that witnesses K. and S. had refused to testify.

The court stated that due to the nature of the criminal activity, the witnesses had been recruited from among drug users and drug addicts, who were "much more vulnerable". The court concluded that the concerns which the two anonymous witnesses had expressed to the investigating authorities had resulted in the correct procedural steps being taken in accordance with Article 55 § 2 of the Code of Criminal Procedure, including the decision to interrogate them under fictitious names.

As regards the discrepancies in the witnesses' statements, the Regional Court stated that witness "Jana Charvátová" had recognised the applicant from the photographs as the person from whom she had bought heroin, but had not known his name. She had described a drug dealer whom she had known under the name "Hasan" and who had not corresponded to the description of the applicant. The court held that the testimony given by witness "Jan Novotný" had not been contradictory and that he had repeatedly described from whom, where and when he had bought heroin. He had usually seen the applicant in a smoke-filled gambling hall under subdued lighting, and had not been concentrating on remembering details of the applicant's appearance, but rather on obtaining drugs. The court held that his inability to describe the correct hair colour "did not play an important role". It fully endorsed the District Court's finding of fact and law.

On 6 May 1998 the applicant lodged a constitutional appeal *(ústavní stížnost)*, claiming a violation of his right guaranteed by Article 6 § 3(d) of the Convention. He alleged that there had been no legal basis for the use of the anonymous witness testimony and that the authorities had put the defence under a substantial disadvantage, contrary to the principle of equality of arms. He complained that his conviction had been based solely on the testimonies of anonymous witnesses.

On 3 March 1999 the Constitutional Court *(Ústavní soud)* dismissed the applicant's appeal as unsubstantiated. It held that statements of anonymous witnesses could only be used in evidence if the principle of subsidiarity was observed, namely if there were no other means of ensuring the safety of a witness and any limitation on the rights of the defence had been minimised. The court acknowledged that there was a conflict between, on the one hand, the constitutional right to defend oneself and, on the other hand, the need to protect the health and life of witnesses. It stated that this conflict could be resolved only on the basis of the principle of proportionality.

The court did not accept the applicant's allegation that the anonymous witness procedure had been misused to his prejudice. It held that, to the extent that the defence rights may have been interfered with through the use of statements of anonymous witnesses, it was necessary to consider the extent and the seriousness of the interference in the light of the specific circumstances of the case. It held that the official police records had indicated that the two anonymous witnesses had been interviewed in the presence of the applicant's lawyer who had had the opportunity to question them. The court concluded that, having regard to the photograph-based recognition of the applicant carried out before the pre-trial authorities as well as before the trial court, no doubt could be cast on the legality and fairness of the criminal proceedings. It held that any disadvantages under which the defence may have operated did not give rise to any question of

unconstitutionality as it was the contents of the witnesses' evidence rather than their identity that was relevant, notwithstanding the fact that the courts had not provided sufficient reasons for having proceeded pursuant to Articles 55 and 209 of the Code of Criminal Procedure.

B. Relevant domestic law

Criminal Code (in force at the material time)

Article 187 § 1 provided that anyone who manufactures, imports, exports, transports, acquires for someone else or keeps for someone else narcotics or poisons without a permit shall be penalised by imprisonment of up to three years or by a fine.

Code of Criminal Procedure (in force at the material time)

According to Article 55 § 2, where the circumstances indicate that a witness or a person close to the witness run an obvious risk of bodily harm or other serious danger of interference with his/her fundamental rights in testifying, and when it is not possible to ensure properly the protection of the witness in another way, the authorities shall take measures to conceal the witness' identity. The witness' name and surname as well as his/her other personal data are not entered into the protocol, but are kept separate from the criminal file and may be known only to the authorities. The witness must be informed of the right to ask to have one's identity concealed and to sign the protocol using a fictitious name and surname, to which the person is then referred. If the reasons for concealing the witness' identity and for separating the witness' personal data cease to exist, this information shall be attached to the criminal file and the witness' identity will no longer be concealed.

Under Article 209 § 1 the president of the bench shall ensure that any witness who has not yet testified does not attend the interrogation of the defendant or of other witnesses. If there is any doubt that the witness will not testify truthfully in the presence of the defendant, or if the witness or the persons close to him are at risk of bodily harm, death or any other serious danger, the president of the bench shall take appropriate measures to ensure the safety or to conceal the identity of the witness, or shall order the defendant out of the courtroom for the period of the witness' interrogation. However, once having returned to the courtroom, the defendant must be informed of the contents of the witness' testimony, he/she may comment on it, and, without meeting the witness in person, may put questions to the witness through the president of the bench. When the witness' identity is to remain concealed, the president of the bench shall take measures in order to prevent the true identity of the witness being revealed.

Article 209 § 2 provided that when a witness whose identity had been concealed was heard at trial, the court, acting on its own motion, shall take all necessary steps with a view to verifying the witness' credibility.

C. Relevant decisions of the Constitutional Court

Decision No. Pl. ÚS 4/94 of 12 October 1994

The plenary assembly of the Constitutional court repealed as unconstitutional the version of Articles 55 § 2 and 209 of the Code of Criminal Procedure then in force. It declared that the criteria for assessing whether the use of anonymous witnesses was constitutional and in line with the principle of subsidiarity were as follows: firstly, anonymity may only be granted if the witness cannot be provided with reliable protection in any other way; secondly, any constraints on the exercise of the rights of the defence resulting from the hearing of an anonymous witnesses must be kept to a minimum.

Decision No. ÚS 37/01 of 22 October 2001

In this case, the court found the criminal proceedings unfair because the appellant's identification had been based on photograph-albums only, without the witness having described the appellant prior to the identification procedure. Concerning the use of anonymous witnesses, the Constitutional Court concluded that the trial court had not verified the credibility of the witnesses as provided for in Article 209(2) of the Code of Criminal Procedure. The trial court only declared that the witnesses had no "pending bills" with the applicant and hence there was no reason for them to take revenge against the appellant and to incriminate him falsely. According to the Constitutional Court, such a declaration cannot of itself mean that the trial court complied with Article 209(2) of the Code of Criminal Procedure. It should have examined and verified the relationship between the witnesses and the appellant, checked the latter's objections to their credibility and introduced all necessary evidence, for example the full transcript of the criminal record of the witnesses, the reports of local police and administrative authorities on the reputation of the witnesses, and the psychological expert reports on the witnesses under Article 118 of the Code of Criminal Procedure. The Constitutional Court quashed the decisions of both the trial and appeal courts.

D. Documents of the Council of Europe

Appendix to Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence

"...

11. Anonymity should only be granted when the competent judicial authority, after hearing the parties, finds that:

i. the life or freedom of the person involved is seriously threatened or, in the case of an undercover agent, his potential to work in the future is seriously threatened; and

ii. the evidence is likely to be significant and the person appears to be credible.

12. Where appropriate, further measures should be available to protect witnesses giving evidence, including preventing identification of the witness by the defence e.g. by using screens, disguising his face or distorting his voice.

13. When anonymity has been granted, the conviction shall not be based solely or to a decisive extent on the evidence of such persons.

14. Where appropriate, special programmes, such as witness protection programmes, should be set up and made available to witnesses who need protection. The main objective of these programmes should be to safeguard the life and personal security of witnesses, their relatives and other persons close to them.

15. Witness protection programmes should offer various methods of protection; this may include giving witnesses and their relatives and other persons close to them an identity change, relocation, assistance in obtaining new jobs, providing them with body-guards and other physical protection.

16. Given the prominent role that collaborators of justice play in the fight against organised crime, they should be given adequate consideration, including the possibility of benefiting from measures provided by witness protection programmes. Where necessary, such programmes may also include specific arrangements such as special penitentiary regimes for collaborators of justice serving a prison sentence.

COMPLAINTS

The applicant complains under Article 6 §§ 1 and 3(d) of the Convention that his conviction was based exclusively on the anonymous witness testimony. He also complains that the judicial proceedings did not

adequately guarantee the necessary safeguards to ensure a fair trial as his counsel was denied the opportunity to see either anonymous witness testify or learn their identities. He further complains that his counsel was not able to probe the reliability of either witness' testimony or their credibility and that the domestic courts failed to verify their credibility. He maintains that the conditions under which the photograph-based identifications were conducted were improper and deprived the witnesses of their reliability. He asserts that the national authorities did not carry out an examination into the need to maintain the anonymity of the witnesses and that at no time before the decision was taken to use anonymous witness testimony was the defence afforded an opportunity to object to the reliability of either witness or comment on the nature of any alleged threat to the witnesses' safety which might have warranted anonymity. He complains that the national courts at no point indicated that they knew the true identity of either anonymous witness, nor did they find on the facts that the applicant posed a serious threat to their life or freedom.

THE LAW

1. The applicant complains about the procedure followed with regard to the hearing of the anonymous witnesses and the use of those witnesses' statements as evidence of his guilt. He alleges a violation of Article 6 §§ 1 and 3(d) of the Convention, according to which:

> "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; ..."

The Government accept that the use of anonymous witnesses must be sufficiently justified by the circumstances of the case. In the present case, the need to grant anonymity to the witnesses arose as early as 24 April 1997 when a person, addicted to heroin at that time and later examined under the name "Jana Charvátová", clearly declared that she was ready to testify provided she was granted anonymity.

Both witnesses "Jana Charvátová" and "Jan Novotný" insisted on maintaining their anonymity during their interviews on 11 July 1997 when they expressed their fears of suffering reprisals at the hands of drug dealers and the risk of personal injury. The Government state that since drug dealing was involved and dealers frequently use threats or actual violence against persons who testify against them, the witnesses' fears could not be

considered groundless even if the applicant maintained that he did not threaten them. In the Government's view, the specific circumstances of the case justified the granting of anonymity to both witnesses.

They further observe that the applicant's lawyer was present when the police investigator examined both witnesses. The lawyer did not challenge the reasons for granting them anonymity, nor did he raise any objection with the prosecutor under Article 167 of the Code of Criminal Procedure.

The Government note that whenever the personal data of a witness are kept secret, his or her first name and surname or other personal information are not mentioned in the record of interview. Nevertheless, such personal data are recorded separately from the criminal case file and the authorities involved in criminal cases have access to the data. The personal data are also available to the courts which have to be appraised of them. In the present case, the trial court took note of the content of the sealed envelopes and marked them with its official stamp.

The Government acknowledge that the defence's position must be sufficiently compensated whenever use is made of anonymous witnesses. They dispute the applicant's objection that neither he nor his lawyer could see the witnesses and did not know their real identities and, therefore, were unable to verify their credibility. In fact, the applicant's lawyer could, to a certain extent, directly observe the behaviour of the anonymous witnesses during the proceedings. Both anonymous witnesses were questioned by the police officer at the pre-trial proceedings. Under Article 165 § 1 of the Code of Criminal Procedure, the applicant's lawyer was present at their interviews. Once the examination was completed, he had an opportunity to comment on the witnesses' statement and to question them directly, being in the same room as the witnesses who were separated from him by a moveable partition. Moreover, he heard the manner in which the witnesses responded to questions. Accordingly, even if he could not see them, he could appreciate what the witnesses were saying and the manner in which they said things, for example whether they were hesitant in their replies. He could also register the witnesses' emotions. Thus, he could draw his own conclusion as to their credibility, basing himself on his direct, although partially limited, perception of their behaviour and responses. Moreover, he could raise objections during the proceedings.

The trial court heard "Jan Novotný" outside the courtroom in the absence of the parties, as provided for in Article 20 § 1 of the Code of Criminal Procedure. The presiding judge then informed the parties about the content of this witness' statement. The applicant and his lawyer used the opportunity to comment on it and to question the witness through the intermediary of the court. The evidence of "Jana Charvátová" given in the pre-trial proceedings was, by virtue of Article 211 § 2(a) of the Code of Criminal Procedure, read out. The Government note that the applicant's

lawyer, knowing that this witness could not be found, did not object to this procedure.

For the Government, the defence had an opportunity to examine both anonymous witnesses under conditions which complied with the requirements of Article 6 § 3(d) of the Convention.

The Government acknowledge in the light of the Court's case-law that a conviction should not be based either solely or to a decisive extent on anonymous statements. They concede that the applicant was convicted almost solely on the basis of the two anonymous witnesses' testimonies. However, the applicant's case differed from the anonymous witness cases in which the Court had found a breach of Article 6 § 3 (d) of the Convention. They submitted that, in those cases, the Court had found that other fairness principles had been violated. Moreover, unlike in those cases, the anonymous witness "Jan Novotný" had been heard at the preliminary stage of the criminal proceedings and later on at the trial.

The Government conclude that there has been no violation of Article 6 §§ 1 and 3(d) of the Convention.

The applicant disputes the Government's contentions. As to their argument that "Jana Charvátová" would not testify unless she were granted anonymity and that she could not have been protected by other means, the applicant observes that a mere request for the grant of anonymity does not mean that the police are dispensed from examining whether the witness could have been afforded other means of protection. Her refusal to testify under her real name cannot of itself be a sufficient reason for granting her anonymity.

The applicant criticises the Government's view of the witnesses' answers to the questions put by his lawyer in respect of their alleged fears. For the applicant, the authorities should have made sufficient efforts to assess the threat of reprisals against the witnesses and evaluated whether he was in a position to carry out such threats.

The applicant further objects to the Government's allegation that he "viewed himself as a low-level drug dealer". In fact, he pleaded not guilty throughout the criminal proceedings. The applicant maintains that the references in the proceedings to the seriousness of the criminal activity with which he was charged and the Regional Court's remark about the vulnerability of drug addicts do not amount to adequate reasoning.

With reference to Recommendation No. R(97) 13 of the Committee of Ministers, the applicant disputes the Government's argument that the Court has not laid down any specific procedures to be followed when deciding on the grant of anonymity to witnesses. In this Recommendation, the Committee of Ministers outlined a procedure on this matter, including the requirement that a request of a witness for anonymity should be submitted to the judicial authority by a prosecutor and should be served on the defendant or his lawyer.

The applicant does not object to the way in which the evidence of the witnesses was taken. He acknowledges that his lawyer was in the same room as the witnesses during the pre-trial proceedings and had heard and questioned them directly. However, he does not know the content of the sealed envelopes in his criminal file, as referred to by the Government, and he doubts whether the witnesses were properly examined as regards their relationship with him. He maintains that, generally, the "examination" within the meaning of Article 101(1) of the Code of Criminal Procedure is a more or less formal procedure.

As to the standards of verification of the witnesses' credibility, the applicant refers to the Constitutional Court's decision IV. ÚS 37/01 and argues that, contrary to the Government's allegation, the District Court did not apply Article 209(2) of the Code of Criminal Procedure. He adds that the trial court had to verify the credibility of the witnesses of its own motion, despite the passivity of his lawyer on this point. He does not dispute that the assessment of evidence was primarily a matter for regulation by the national authorities. However, he states that the discrepancies in the testimonies of "Jana Charvátová" and "Jan Novotný", including the erroneous identification and recognition procedure, underlined the inadequacy of the verification of their credibility by the authorities.

The applicant challenges the Government's argument that in cases where the Court has found violations of the Convention on the grounds that applicants were convicted to a decisive degree on the basis of anonymous witness testimony it has at the same time always found a breach of some other principles. In fact, the authorities in his case also made other errors which aggravated the unfairness of the proceedings in his case. In any event, the prohibition on the conviction of an accused solely on the basis of anonymous witness testimony was absolute.

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

S. DOLLÉ
Registrar

J.-P. COSTA
President