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

THIRD SECTION

DECISION

Application no. 41541/22
Janez PUŠNIK
against Slovenia

The European Court of Human Rights (Third Section), sitting on 2 December 2025 as a Committee composed of:

Lətif Hüseynov*, President*,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 41541/22) 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") on 19 August 2022 by a Slovenian national, Mr Janez Pušnik ("the applicant"), who was born in 1959, is detained in Mirna na Dolenjskem and was represented by Mr A. Pipuš, a lawyer practising in Maribor;

the decision to give notice of the complaints under Article 6 §§ 1 and 3 (d) concerning the admission of evidence and the examination of a witness in a criminal trial against the applicant to the Slovenian Government ("the Government"), represented by their Agent, Ms J. Morela, Senior State Attorney, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns criminal proceedings in which the applicant was convicted of, *inter alia*, attempted murder.

2. On 11 September 2016 the applicant voluntarily went to Maribor police station, after a neighbour had notified him that the police had been looking for him. Once at the police station, the applicant signed (without expressing any reservations) an official note stating that he had read his rights. The

applicant refused to be represented by a lawyer. He consented to a search of his mobile phone, which he allowed to be conducted in his absence. He was detained at the police station at 7.50 a.m.

3. On 13 September 2016 the investigating judge of the Maribor District Court ordered that a State-funded defence lawyer be appointed for the applicant. After the hearing, the applicant was placed in detention, where he remained until his conviction. The beginning of detention was counted from the actual time of the arrest, *i.e*. from 7:50 a.m. on 11 September 2016.

4. On 3 October 2016 the Maribor District Court held a hearing for the examination of witnesses, to which J.K. – the injured party, who was the victim of the attempted murder – was invited. When she saw the applicant in the corridor of the court, she became very frightened, started to hyperventilate and had a panic attack. The panic attack was deemed so severe that she was taken from the court building by ambulance.

5. On 17 March 2017 the District Court rejected a request by the applicant to exclude the evidence obtained during the search of his mobile phone, finding that the evidence had been obtained lawfully. On 31 March 2017 the applicant lodged an appeal against that decision, which was rejected as unfounded by the Maribor Higher Court on 7 April 2017.

6. On 9 June 2017 J.K. submitted medical documentation to the District Court by way of a written submission and requested that the court hear her in the absence of the applicant, in accordance with the relevant provision of the Criminal Procedure Act. According to the medical documentation, she was unable to face the applicant in court, as doing so could trigger another panic attack.

7. On 12 June 2017 the District Court decided to hear J.K. without the applicant being present. Before the questioning of J.K. began, the applicant had been escorted out of the courtroom, while his lawyer remained. The victim was questioned by the court, the prosecution, her representative and the applicant's lawyer; afterwards, the applicant was brought back into the courtroom, where the entirety of the victim's statement, together with the questions put to her and her answers to them, was read to him. The applicant had an opportunity to put questions to J.K., but he expressly stated that he had no questions for her.

8. In its judgment of 12 January 2018, the Maribor District Court found the applicant guilty and sentenced him to ten years and nine months' imprisonment. In its judgment, the court relied on evidence obtained from the applicant's mobile phone, J.K.'s testimony, and additional material evidence and witness statements.

9. In a subsequent appeal, the applicant challenged, *inter alia*, the use of the evidence obtained from his mobile phone and the manner in which J.K. had been examined. On 4 July 2018 the Maribor Higher Court upheld the appeal in part, reducing the applicant's sentence to seven years and five months' imprisonment, while rejecting his complaints concerning the

admissibility of the evidence from his mobile phone and the manner in which J.K. had been examined.

10. In its judgment of 18 April 2019, the Supreme Court dismissed an application for the protection of legality lodged by the applicant, finding, *inter alia*, that the evidence obtained during the search of his mobile phone (see paragraph 2 above) had not been acquired in breach of his rights. The judgment noted that (i) the applicant had been arrested on 11 September 2016 at 7.50 a.m., at which time he had been read his rights; (ii) at 10 a.m. his mobile phone had been searched, in accordance with the provisions of the Criminal Procedure Act, which permitted such searches on the basis of judicial orders or with the owner's consent; and (iii) the applicant had voluntarily consented to the search of his mobile phone, which he had allowed to be conducted in his absence. As regards the questioning of the injured party, J.K. (see paragraph 5 above), the Supreme Court held that the applicant's right to a fair trial had not been violated, as his attorney had been present at the hearing and the applicant had been read the entirety of J.K.'s statement together with the questions put to her and her answers to them and had had the opportunity to question her.

11. On 19 April 2022 the Constitutional Court did not accept the applicant's constitutional complaint for consideration.

12. Before the Court, the applicant made two complaints. Firstly, he complained under Article 6 of the Convention that his mobile phone – which had included incriminating evidence later used for his conviction – had been searched by the police before he had been properly informed of his rights or provided with legal assistance. Secondly, the applicant also complained under Article 6 §§ 1 and 3 (d) about the trial court's decision to remove him from the courtroom during the examination of J.K. He alleged that the domestic courts had not put forward any reasons justifying that decision.

THE COURT'S ASSESSMENT

A. Complaint relating to the search of the applicant's mobile phone and to the evidence thereby obtained

13. The Court notes that, during the criminal proceedings, the applicant had the opportunity to challenge the use of the evidence obtained from his mobile phone, which he did both in the independent appeal against the admission of that evidence and the appeal against the final judgment. The Court further notes that the applicant's challenges to the use of the evidence in question were properly examined by the domestic courts, which supported their decisions with relevant and adequate reasoning (see paragraphs 5, 9 and 10 above, and *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 324, 26 September 2023). The Court sees no reason to depart from the domestic courts' finding that the evidence from the applicant's mobile phone was

procured lawfully and in compliance with his defence rights. In this connection, it notes that the applicant consented to the search of his mobile phone and declined to be represented by a lawyer at that stage of the proceedings. Indeed, the applicant has not submitted any material capable of casting doubt on the domestic courts' findings on that matter.

14. Accordingly, and having regard to the principles established in its case-law on the subject matter (see *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V, and *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX), the Court finds this complaint to be manifestly ill-founded and rejects it in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint relating to the examination of the injured party in the applicant's absence

15. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. In addition, all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence; as a general rule, Article 6 §§ 1 and 3 (d) require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see *Papadakis v. the former Yugoslav Republic of Macedonia*, no. 50254/07, §§ 91-95, 26 February 2013). The complaint relating to the examination of the injured party in the applicant's absence must be examined in light of the following questions: whether there were good reasons to permit a witness to give evidence without the applicant being present; whether that evidence was the sole or decisive basis for the applicant's conviction; and whether there were sufficient counterbalancing factors (including strong procedural safeguards) to ensure that the trial as a whole was fair within the meaning of Article 6 §§ 1 and 3 (d) (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 111-31, ECHR 2015).

16. As to the reason for admitting the evidence without the applicant being present, the Court observes that that measure was put in place at the request of J.K., who was the victim of the attempted murder and had previously suffered a panic attack when confronted with the applicant in the District Court (see paragraph 4 above). The decision to remove the applicant for the duration of her questioning was made in the light of that incident and the medical documentation attesting to her inability to face him (see paragraph 6

above). Accordingly, the Court accepts that there were relevant reasons to hear the witness without the applicant being present.

17. The Court notes that the trial court relied to a certain extent on J.K.'s statement as a victim in order to establish the applicant's guilt. However, the trial court also based its decision on other evidence, namely the testimony of other witnesses and material evidence (see paragraph 8 above). The Court therefore considers that J.K.'s testimony was not the sole evidence against the applicant, even though it carried considerable weight in establishing his guilt. The Court further notes that there were sufficient factors counterbalancing any handicaps that the admission of that evidence might have entailed for the defence (compare *Okropiridze v. Georgia*, nos. 43627/16 and 71667/16, § 89, 7 September 2023). In particular, the judge conducted J.K.'s questioning and was able to observe the witness's demeanour and form a clearer impression of her credibility (compare *Ivannikov v. Russia* [Committee], no. 36040/07, § 26, 25 October 2016). The applicant's counsel was present at the hearing and was likewise able to observe her demeanour and question her. The applicant had the opportunity to give his own version of events, to have witnesses testify on his behalf and to cast doubt on the credibility of J.K., whose identity was known to him. He was given an opportunity to question her once he re-entered the courtroom, and her statement, together with her answers to the questions put to her, was read to him (see paragraph 7 above). Lastly, the domestic court carried out an assessment of the evidence provided by J.K. and compared it with the statements made by other witnesses and the material evidence (see paragraph 8 above).

18. Having regard to the above considerations, in particular to sufficient counterbalancing factors provided in the proceedings against the applicant, the Court finds no indication that his rights of the defence were restricted to an extent that could be considered incompatible with the guarantees of Article 6 §§ 1 and 3 (d) of the Convention. This complaint should therefore be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 January 2026.

Olga Chernishova Deputy Registrar	Lətif Hüseynov President