



Criminal conviction for drug trafficking of truck driver was not unfair

In today's **Chamber** judgment¹ in the case of [Poletan and Azirovik v. "The former Yugoslav Republic of Macedonia"](#) (application nos. 26711/07, 32786/10 and 34278/10) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 2 (right to a fair trial / presumption of innocence) of the European Convention on Human Rights.

The case concerned the complaint of two persons convicted of drug trafficking that the criminal proceedings against them had been unfair. They notably alleged: that the trial court's decision had lacked reasoning; that one of the applicants had been unable to consult the case file and that she had had no opportunity to examine two witnesses; and that the expert examination of the substance in question had been biased.

The Court – underlining that its role was essentially subsidiary to that of the national authorities which were better placed to assess the credibility of evidence with a view to establishing the facts – saw no reason to depart from the domestic courts' conclusion to the effect that one of the applicants, who had driven the truck in which the drugs were found, had been aware that he was transporting drugs.

The Court further declared inadmissible for being manifestly ill-founded the remainder of the complaints. It noted in particular that while two witnesses had been unable to attend the trial their statements – which had been read out instead – had constituted neither the sole, nor the decisive evidence on which the domestic courts had relied.

Principal facts

The applicants, Stanislava Poletan and Alija Azirovik, are Macedonian nationals who were born in 1968 and 1973 and live in Belgrade and Skopje respectively.

In January 2007 a court in Skopje opened a criminal investigation against the applicants on suspicion of having trafficked over 400 kg of cocaine. Detention orders were issued in their respect. The substance in question had been found, hidden in packs submerged in sealed cans of paint on a truck driven by Mr Azirovik, during a search carried out by the Macedonian customs at a border crossing. When questioned by the investigating judge, Mr Azirovik stated that he had been requested by Ms Poletan to transport the paint from Montenegro to Greece and that he had been unaware that he had been transporting drugs. After an international arrest warrant had been issued in respect of Ms Poletan, she was arrested in Serbia and subsequently extradited to "The former Yugoslav Republic of Macedonia", where she was placed in detention. When questioned by the investigating judge in the presence of her lawyer, she confirmed that she had agreed with Mr Azirovik that he would transport the paint for her from Montenegro to Greece for 1,100 euros, and she denied being aware that drugs had been planted in the cans. At a court hearing during the trial, in August 2007, she specified that a business partner in Greece who owed her money had offered to provide her instead with paint from Venezuela, which was shipped to Montenegro.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In November 2007 both applicants were convicted of drug trafficking and sentenced to 14 years and six months' imprisonment. The judgment was based, in particular, on the following evidence: the applicants' statements; statements from several witnesses and customs officials; material evidence, including three expert reports assessing the quality and quantity of the substance found, confirming that it was pure cocaine; and a detailed list of phone calls from the applicants' mobile phones. The judgment was upheld on appeal, the final decision being delivered by the Supreme Court in October 2009.

Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1, 2, and 3 (b) and (d) (right to a fair trial / presumption of innocence / right to adequate time and facilities for preparation of defence / right to obtain attendance and examination of witnesses), the applicants complained that their trial had been unfair. Ms Poletan notably alleged that she had not been allowed to consult the case file during the investigation, which had affected her ability to prepare her defence, and that she had had no opportunity to examine two of the witnesses. Both applicants complained about the domestic courts' refusal to allow an alternative expert examination of the substance found, which the applicants had requested, alleging that the experts who had examined the drug were biased. Finally, Mr Azirovik complained that the domestic courts had failed to provide any reasoning to demonstrate that he knew of the drugs in the cans.

The application was lodged with the European Court of Human Rights on 12 June 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Ledi **Bianku** (Albania), *President*,
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

As regards the **alleged lack of reasoning of the domestic courts in respect of Mr Azirovik**, the Court observed that the following facts were undisputed: Mr Azirovik had been engaged by Ms Poletan to transport paint on a truck from Montenegro to Greece, for which he was paid; he had called the relevant contact person in Montenegro, whose telephone number had been given to him by Ms Poletan, to discuss formalities regarding the cargo; he had driven the truck at the relevant time to the border crossing, where the drugs had been discovered in the cans of paint; and the expert examination had confirmed that the drug found was cocaine. Furthermore, the applicants had exchanged a considerable number of telephone calls before and during the shipment, on which the domestic courts had relied in their judgments.

The Court underlined that its role in this matter was essentially subsidiary to that of the domestic authorities which were better placed to assess the credibility of evidence with a view to establishing the facts. In the circumstances of the case, it sees no reason to depart from the assessment made by the domestic courts regarding Mr Azirovik's knowledge of the presence of the drugs in the cans. Accordingly, there had been **no violation of Article 6 §§ 1 and 2**.

The Court **declared inadmissible** for being manifestly ill-founded **the remainder of the applicants' complaints under Article 6**. It observed, in particular, the following:

As regards Ms Poletan's right to consult the case file, the Court noted that her lawyer had made several requests to consult the file, and according to handwritten notes on each application those requests had been granted. The fact that the lawyer had only inspected the case file several days after the applicants had been indicted did not in itself imply that Ms Poletan had been denied the right to challenge effectively the basis of the charges against her. Notably, her lawyer had consulted the case file before the trial court had held the first hearing.

As regards the two witnesses whom Ms Poletan had been unable to examine – Montenegrin nationals who had been involved in dispatching the cargo in Montenegro –, they had been unable to attend the hearing scheduled before the trial court in Skopje and had therefore given oral evidence before an investigating judge of the competent court in Montenegro. The Court observed that the applicants and their representatives had not objected to the decision of the trial court in Skopje to order the witnesses to produce oral evidence before the court in Montenegro in case they were unable to attend the hearing. Furthermore, Ms Poletan and her representative had not raised any objection when the trial judge had read out the witnesses' statements, nor had they sought, later in the proceedings, to have questions put to the witnesses. In the court's view, they could thus be considered to have waived their right to cross-examine those witnesses.

Taking into account the principles from its case-law under Article 6 to be applied when a witness did not attend a public trial, the Court further observed that the statements of the two witnesses in question had not constituted the sole item of evidence on which the trial court had relied. Moreover, this evidence had not been decisive for Ms Poletan's conviction. In those circumstances, her defence rights had not been violated.

Concerning the allegation that the experts who had examined the drug were biased, the applicants had argued that those experts were employed by the Criminal Investigations Bureau at the Ministry of the Interior, the body which had brought the criminal proceedings against the applicants. In the Court's view, the fact that an expert was a member of the police did not in itself justify the apprehension that he would be unable to act with appropriate neutrality. The Court further noted, in particular, that the experts had given evidence under oath and they had expressly denied having received instructions from anyone, including their employer. The applicants and their lawyers, who had attended the hearing, had had the opportunity to reveal any possible conflicts of interest or flaws in the methods of examination, but they had made no such remarks as to the experts' assessment of the substance in question. Furthermore, they had not contested the experts' finding that that substance was cocaine. In those circumstances, the Court did not consider that the appointment of experts employed by the Ministry of the Interior had rendered the proceedings unfair.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.