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

SECOND SECTION

CASE OF SOLAKOV v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(*Application no. 47023/99*)

JUDGMENT

STRASBOURG

31 October 2001

FINAL

31/01/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Solakov v. the Former Yugoslav Republic of Macedonia,

The European Court of Human Rights, sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, Section Registrar,

Having deliberated in private on 31 May 2001 and on 11 October 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 47023/99) against the Former Yugoslav Republic of Macedonia lodged on 3 December 1998 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Blagoj Solakov ("the applicant") who is national of the Former Yugoslav Republic of Macedonia.

2. The applicant was represented by Ms M. Nichols and Mr D. Matray of the Liège Bar (Belgium). The Government were represented by their agent Mr C. Cvetkovski and co-agent Ms R. Lazarevska-Gerovska, advisers at the Ministry of Justice.

3. The applicant alleged under Article 6 §§ 1 and 3 (d) of the Convention that his trial was unfair in that he had been unable to cross-examine the witnesses whose statements served as the only basis for his conviction and to obtain the attendance and examination of two witnesses for the defence.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. By a decision of 25 January 2001 the Court declared the application admissible.

6. The Government, but not the applicant, filed additional observations on the merits and produced additional documents (Rule 59 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 31 May 2001 (Rule 59 § 2).

There appeared before the Court:

(a) for the Government
Ms R. LAZAREVSKA-GEROVSKA,
from the Ministry of Justice, *Co-Agent*,
Mr G. KALAJDZIEV,
from the Skopje Faculty of Law, *Legal Advisor*;

(b) for the applicant

Ms M. NICHOLS and
Mr D. MATRAY, both of the Liège Bar (Belgium) *Counsel*.

The Court heard addresses by them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, who had lived for a period in the United States, was suspected of drug trafficking and a warrant for his arrest was issued by the United States Police in January 1996.

9. Following the request of the United States authorities, on 15 August 1997 the Public Prosecutor asked the Skopje Municipal Court to institute preliminary investigation against the applicant on charges that between January 1992 and May 1995 he had smuggled around 10.5 kg. of drugs from Bulgaria and the Former Yugoslav Republic of Macedonia to the United States and that for that purpose had set up a drug trafficking network involving also his son, who lives in the United States. The prosecution's request set out the names of the persons involved and against whom criminal proceedings were pending or completed in the United States and asked for their interrogation.

10. On 30 September 1997 the investigating judge opened criminal investigation against the applicant, decided to hear the witnesses proposed by the prosecution and detained the applicant on remand.

11. On 1 October 1997 the investigating judge asked the Ministry of Justice to contact the United States Government and to request their assistance in hearing of some witnesses in their country. On 10 October 1997 the Ministry of Justice addressed the request to the United States Embassy.

12. On 7 November 1997 the United States Embassy was informed by the investigating judge of the investigation pending against the applicant. The notice contained the names of the witnesses to be examined in the United States and a list of fifteen questions to be put to them.

13. On 28 November 1997 the applicant's lawyer was informed that the investigating judge would go to the United States one week later and was summoned to the hearing.

14. On 1 December 1997 the lawyer was denied a visa for the United States on the ground that he had not produced all the relevant documents required. The United States Embassy informed him that it would review his application for a visa provided that he submitted a certificate of his working position, income, seniority and evidence that he owned real estate and had family ties in the Former Yugoslav Republic of Macedonia. The lawyer never reapplied for a visa. On 2 December 1997 the applicant withdrew his power of attorney.

15. On 3 December 1997 the applicant appointed another lawyer, who on the same day was summoned to attend the hearing of witnesses in the United States scheduled for 8 December 1997. On the summons, the lawyer placed his signature in the space provided for the bailiff's signature and the bailiff placed his signature in the space provided for the lawyer's signature.

16. On 4 December 1997 the applicant was questioned. He stated that he had been informed by the investigating judge that witnesses would be heard in the United States. He had contacted his second lawyer and left to him the decision whether or not to attend the interrogation. He further stated that the expenses for the trip would not be a problem as he had had sufficient funds to cover them.

17. On 4 December 1997 the investigating judge informed the United States Embassy in the Former Yugoslav Republic of Macedonia that on 28 November 1997 the applicant's first lawyer had been summoned to attend the interrogation of the witnesses in the United States and that the applicant's second lawyer had declared that there was no need to attend the interrogation and that he had insufficient funds to meet the travel expenses.

18. On 8 and 9 December 1997, five witnesses were heard by the investigating judge in the presence of the public prosecutor and the court interpreter. Their testimonies were recorded. The witnesses were involved in the drug trafficking network organised by the applicant, and they were all serving prison sentences in the United States for drug trafficking.

19. According to the witnesses, who were under oath and were heard separately, it was the applicant who had set up the entire network and who had organised the smuggling and re-sale of approximately 10.5 kg. of drugs into the United States. The applicant had contacts in Bulgaria, from where he would smuggle the drugs into the Former Yugoslav Republic of Macedonia. He would then arrange for them to be smuggled into the United States. Some of the witnesses stated that they had smuggled the drugs in a plaster-cast which the applicant would wrap around one of their legs, as though it were broken. On their arrival in the United States they would hand over the drugs to the applicant's son in return for payment. Some of the witnesses stated that they had had an agreement with the applicant and his son for drug dealing and had been supplied with the drugs in the applicant's and his son's house.

20. Two of the witnesses who had travelled to Bulgaria on separate occasions gave evidence that they had been taken into Mr Robert M.'s apartment in Bulgaria, where Mr Robert M. and the applicant had wrapped plasters with drugs around one of the witnesses' legs. None of the witnesses had given any statement regarding Mr Angel B.

21. On 22 December 1997 the Public Prosecutor indicted the applicant with drug trafficking from Bulgaria and the Former Yugoslav Republic of Macedonia to the United States and with setting up an international network for that purpose. The witnesses' statements were included in the indictment.

On 29 December 1997 the applicant was released.

22. On 1 January 1998 the applicant made a submission to the Municipal Court that there was no case to answer as there was no convincing evidence against him. In particular, the indictment was predominantly based on the testimonies of the witnesses who were serving prison sentence in the United States and who had not been cross-examined by the defence. The applicant argued that the witnesses had a deal with the United States authorities to have their sentences reduced in exchange for their co-operation. On the one hand, since they had already been convicted in the United States, the witnesses were aware that they would not risk anything if they gave false evidence, as they could not be prosecuted for drug trafficking under the law of the Former Yugoslav Republic of Macedonia. On the other hand, if they modified their testimonies, they ran the risk of losing all the benefits which were agreed upon by the authorities.

23. On 12 January 1998 the court held that on the basis of all the evidence in the case there was a reasonable suspicion that the applicant might have committed the offence with which he had been charged and refused to terminate the criminal proceedings against him.

24. On 13 January 1998 a hearing was held before the Skopje Municipal Court. On 22 January 1998 a second hearing was held. The applicant claimed to be innocent and stated that he had not travelled to the United States because he knew that it might be dangerous for him.

Photographs showing the plaster-cast, belonging to a person involved in the drug dealing with the applicant, in which drugs had been found, photographs of the witnesses, reports on the search of the applicant's son's and another witness' apartment where some drugs had been found and the reports on the investigation in connection with the applicant's son and his pre-trial detention were, *inter alia*, examined.

25. The applicant complained that he had been unable to cross-examine the witnesses. He also disagreed to read out the statements in open court.

The court decided to read out the statements of the witnesses examined in the United States in open court because: "to secure the attendance of the witnesses is extremely difficult and there are also other important reasons".

The applicant challenged the witnesses' statements without pointing out concretely why they should not be considered trustworthy, nor specified the questions that he would have liked to be put to the witnesses.

26. At the hearing of 22 January 1998 the applicant requested that two additional witnesses for the defence be examined. The record of the hearing stated as follows:

> "... the applicant's lawyer asked the court to gather information about Mr Robert M., in particular, regarding his place of residence, whether Mr Robert M. was charged with being one of the co-organisers [of the drug trafficking] with the accused, [and if so] to obtain his case-file, and to call him as a witness.
>
> He also called the witness Mr Angel B. from the village of Kompliven, Bulgaria, to give evidence on whether he knew the accused and Mr Robert M., whether he had ever been in Mr Robert M.'s apartment with the accused, whether he knew if the accused had been supplied with drugs (amphetamines), whether he knew some of the prosecution witnesses, etc ..."

The Skopje Municipal Court refused the motion on the ground that "the court has sufficient evidence before it to reach its verdict".

27. On 26 January 1998 the Municipal Court found the applicant guilty of drug trafficking within the meaning of Article 255 § 2 of the Criminal Code and sentenced him to ten years' imprisonment. The court dismissed the applicant's objection that there had been a breach of his right to defence in that he had been unable to cross-examine the witnesses, on the ground that the witnesses had been impossible to summon. It considered the statements reliable, since the witnesses had had no opportunity to make a deal with the Public Prosecutor of the Former Yugoslav Republic of Macedonia to have their sentences in the United States reduced in exchange for giving evidence against the applicant. The court further observed that all the witnesses had recognised the applicant on a photo, and that, although each of them had been heard separately by the investigating judge in the presence of the public prosecutor, their statements were consistent and precise. The court also had regard to the applicant's testimony.

28. On 26 February 1998 the public prosecutor submitted an appeal to the Skopje Appellate Court (Апелационен суд) requesting an increase of the sentence in view of the nature of the offence committed, the degree of danger to the public, the fact that it concerned organised crime at international level and that the applicant was a determined offender.

29. On 6 March 1998 the applicant also filed an appeal with the Skopje Appellate Court, complaining, *inter alia*, that the lower court had infringed the Code of Criminal Procedure and Article 6 of the Convention, as it had reached its verdict only on the basis of the statements of witnesses whom he had not cross-examined. The applicant further complained about the court's refusal to hear two additional witnesses on his behalf.

30. On 20 May 1998 the Appellate Court dismissed the applicant's appeal on the ground that the Municipal Court had acted in accordance with Article 325 of the Code of Criminal Procedure, which stated that witnesses might be heard in the absence of the accused or his lawyer if there was a valid reason making it impossible or extremely difficult (see relevant domestic law).

The court found that the lower court had given a reasoned explanation why it was extremely difficult to cross-examine those witnesses at the public hearing. They had been heard only by the investigating judge and the public prosecutor, but the legal representatives of the applicant had been duly summoned for the examination of the witnesses and, therefore, had had a sufficient opportunity to attend the witnesses' interrogation.

It held that the statements were consistent and logical and corroborated by each other and by other evidence such as the reports from the searches carried out in the apartment of the applicant's son and of another witness. It also held that the two witnesses called by the defence were not relevant as they would not have contributed much to the establishment of the truth.

The court granted the public prosecutor's appeal and increased the applicant's sentence to thirteen years' imprisonment.

31. On 11 June 1998 the applicant filed an appeal on points of law (Барање за вонредно преиспитување на правосилна одлука) with the Supreme Court (Врховен суд).

32. On 2 July 1998 the Supreme Court dismissed the appeal on points of law on the grounds that the investigating judge had acted within his competence when he decided to interrogate the witnesses in the United States and that the applicant and his lawyers had been given an opportunity to attend the interrogation. Furthermore, the Supreme Court held that it would have been impossible to have the witnesses heard at the public hearing, as they were serving a prison sentence overseas. Consequently, in accordance with the rules of the Code of Criminal Procedure there were sufficient reasons to justify the statements being read out at the public hearing.

33. On 6 September 1999 the applicant's son declared before a notary that his father had had nothing to do with drug trafficking. Another person also declared before a public notary that the applicant had been engaged in trade with spare parts for motor vehicles.

On 5 October 1999 the applicant applied to the Skopje Municipal Court to have his case reopened on the basis of those declarations. His application was dismissed on 27 October 1999. On 27 December 1999 that decision was upheld by the Skopje Appellate Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Code of criminal procedure

1. Appeals against the decisions of the investigating judge

34. Article 22 § 6, *inter alia*, provides that a bench of three judges of the first instance court shall decide on appeals lodged against the decisions of the investigating judge.

Article 382 § 1, *inter alia*, provides that a person shall have the right to appeal against the decisions of the investigating judge.

2. The right to have an ex officio lawyer appointed

35. Article 66 §§ 2 and 5 provides that the president of the court may appoint an ex officio lawyer to a person who is detained pending trial.

3. The right to consult the case-file

36. Under Articles 69 and 124 a lawyer has the right to consult all the documents in the case-file from the day the prosecution authorities request the investigating judge to open preliminary investigation. A defendant enjoys that right from the day he has been questioned by the investigating judge.

4. Examination of witnesses

37. Article 160 provides that the parties may ask the investigating judge to undertake different actions in the course of the investigation.

Article 161 §§ 4, 5 and 7 reads as follows:

> "4. The prosecution, the defendant and the defendant's lawyer shall have the right to be present when an investigating judge is examining a witness who will not be heard at a public hearing ...
>
> 5. When the prosecution, the defendant and the defendant's lawyer are entitled to be present ... at an interrogation of a witness by an investigating judge, they shall be informed of the time and place of ... the interrogation. If the defendant has been represented by a lawyer the investigating judge shall only inform the lawyer.
>
> ...
>
> 7. Persons present at the interrogation of a witness may ask the investigating judge to put questions to him ..."

Article 325 §§ 1, 2 and 5 reads as follows:

> "1. When an allegation is based on a statement of a person, that person shall be heard at a public hearing. The right to cross-examine him shall not be lost because the transcript of his statement is read out, or because he has already given a written statement.
>
> 2. As an exception ... a bench of judges may decide to read out the transcript of the witness's statement ... if:
>
> (i) the person concerned has died, is mentally ill, cannot be found, or if his attendance is impossible because of old age, illness or any other important reason.
>
> ...
>
> 5. In the records of the public hearing, the court shall state the reasons why the transcript of the witness's statement is read out and whether the witness ... took an oath"

As a matter of court practice, the fact that a witness is overseas has been considered as an "important reason" within the meaning of Article 325 § 2 (i) of the Code, as the court may have no effective means of securing his attendance at the public hearing.

Article 326 provides that where necessary the court may, at its own discretion, decide to hear a tape recording of the witness's statement instead of relaying solely on the transcript.

5. The right to call witnesses

38. Article 274 §§ 1 and 2 reads as follows:

> "1. The parties shall have the right to call a witness ... or other evidence at the hearing even after the case is listed for a hearing.
>
> 2. If the President of the Chamber dismisses the request to call fresh evidence, the parties shall have the right to call the evidence at the public hearing."

6. Re-opening of criminal proceedings

39. Article 392 provides that criminal proceedings may be re-opened if, *inter alia*, a new fact or new evidence is called before the court which may prove the convict's innocence or militate for the reduction of his sentence.

7. Appeal on points of law

Article 411 § 1 reads as follows:

> "(1) A defendant who has been convicted and sentenced to imprisonment or to youth custody by a binding judgment shall have the right to lodge an appeal on points of law in the cases set forth in this Code."

Article 412 reads as follows:

> "The Supreme Court shall have jurisdiction to deal with such appeals."

Article 413 in conjunction with Articles 355 and 356 lays down that such appeals may be lodged on the ground that the courts have erred in law.

Article 415 in conjunction with Article 408 provides that when the Supreme Court grants the appeal on points of law it may substitute its own verdict or quash the decisions of the lower courts and remit the case to them, or declare that the lower courts erred in law.

THE LAW

40. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that his trial was unfair in that he had been unable to cross-examine the witnesses whose statements served as the only basis for his conviction and that he had been unable to obtain the attendance and examination of two witnesses for the defence.

Article 6 §§ 1 and 3 (d), in so far as relevant, provides as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public 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;

..."

A. Submissions of those appearing before the Court

1. The applicant

41. The applicant stated that he had not been provided with sufficient time and information to organise the trip to the United States and prepare for cross-examination of the witnesses. In particular, although the investigating judge had planned his trip to the United States as early as November 1997 he had summoned the applicant's lawyers only one week before the trip was to take place. The summons had contained no detailed information about the venue or exact date of the interrogation, the number and names of the witnesses to be heard, or the questions that the investigating judge wished to put to them.

His second lawyer had not been duly summoned as the summons had only been signed by the court's bailiff.

42. The applicant contended that the notice of the investigating judge to the United States Embassy of 4 December 1997 had prevented the lawyers from obtaining a visa. In particular, by the time this notice had been served, the first lawyer had already been denied a visa.

As regards the second lawyer, the notice stated that he had already declared that there had been no need for his presence at the interrogation and that he could not meet the travel expenses. The applicant further stated that the Government had failed to provide any proof to the effect that the second lawyer had waived his right to be present at the interrogation of the witnesses. In alternative, if he had declared that he was unable to meet the travel expenses the authorities should have offered to cover them.

Despite the applicant's wish to be represented at the interrogation of the respective witnesses, he had not appointed a lawyer in the United States as he would not have the knowledge of the law of the Former Yugoslav Republic of Macedonia.

43. The applicant had not had sufficient time to react and request that the trip be postponed as he had not been aware of the exact date of the interrogation, nor had he sufficient time to challenge the veracity of the statements or complain about the procedural flows during the preliminary investigation.

During the trial he had repeatedly asked to cross-examine the respective witnesses but with no success.

44. The applicant had never been allowed to hear the recording of the statements on tape, and despite his requests, he was given no possibility to verify the accuracy of the transcripts with the tape recording. Moreover, the statements which were taken in English had never been translated by a certified translator or signed by the witnesses.

45. The applicant stated that it had been clear from the Municipal and the Appellate Courts' judgments that the courts had relied mainly, if not solely, on the statements of the witnesses taken in the United States, whom he had been unable to cross-examine. In addition, the statements had not been reliable as some of the witnesses made comments relating to the possibility of their being charged or exposed to some sort of risk in the Former Yugoslav Republic of Macedonia, which indicated that they may have been promised some kind of a deal by the investigating judge or the prosecution authorities.

46. The applicant contended that the Municipal Court refused to hear the two additional witnesses for the defence only on the ground that sufficient evidence had been adduced at the main trial so that no further testimony was necessary. They had been important witnesses for the defence and their names had been mentioned in some of the witnesses' statements. The authorities had not attempted to find their addresses in Bulgaria or the United States and to summon them.

47. In sum, the defence had been denied adequate and proper opportunity to cross-examine the witnesses whose statements served as basis for the applicant's conviction, and had been refused to call two witnesses on the applicant's behalf.

2. The Government

48. The Government reaffirmed that under the domestic legal system all evidence should in principle be given at an adversarial hearing before the court having jurisdiction. However, it was possible in some circumstances provided by law not to hear the witnesses at a public hearing, but only to read out their statements. According to the court practice, the fact that the witnesses concerned had been convicted and were serving prison sentences overseas represented an important ground for only taking their sworn statements and not hearing them in person at the public hearing.

49. They maintained that the fact that the statements had been taken by the investigating judge who was impartial and whose purpose was to collect evidence not only against the applicant but also in his favour offered a sufficient safeguard for the applicant's right to fair trial.

The domestic law had also been applied properly. In particular, the defence had been duly summoned and informed about the time and place of the hearing of witnesses. As early as 30 September 1997 the applicant had been aware of the investigating judge's intention to organise the hearing of the witnesses in the United States, since his decision to open preliminary investigation against the applicant named all the witnesses in question. The applicant was served with the certified copy of the decision. In addition to other notices of the judicial authorities dated 1 and 10 October 1997, the notice of 7 November 1997 addressed to the United States Embassy clearly set out the names of the witnesses to be heard in the United States and fifteen questions that the investigating judge intended to ask. All these documents were included in the case-file to which the applicant's lawyers had access from the day the investigation proceedings were opened and to which the applicant had access from the day he was first questioned, in accordance with Articles 69 and 124 of the Code of Criminal Procedure.

50. A letter was addressed to the United States Embassy urging it to issue the necessary visas for the applicant's lawyers. The investigating judge proceeded with the hearing only when it was clear that the defence had been unable to attend for reasons beyond the court's power. In particular, the applicant's first lawyer had not submitted additional documents requested by the Embassy and the applicant's second lawyer had declared before the investigating judge, perhaps for tactical reasons, that there was no need for him to attend the hearing. In addition, the applicant declared before the investigating judge that he had left the decision whether or not to attend the hearing to his second lawyer and that he had sufficient means to cover the expenses for the trip.

The applicant had not expressed any wish to attend the hearing, perhaps because a warrant had been issued for his arrest by the United States authorities. In any event, the applicant had been represented by two lawyers, who had been duly and in good time summoned to the interrogation.

Furthermore, the applicant had not availed himself of the possibility of appointing a lawyer in the United States nor had he submitted questions in writing to the investigating judge.

51. The dates for the hearing of the respective witnesses were proposed by the United States authorities who provided assistance. Nether the applicant nor his lawyers requested that the trip be postponed or complained afterwards that they had not had sufficient time to organise the trip. The Government considered that the dates chosen for the trip had represented the right balance between the right of the accused to trial within a reasonable period of time and the right to adequate time and facilities to prepare for his defence.

The Government argued that although the applicant had not cross-examined the respective witnesses, his right to challenge their statements had not been affected.

52. The Government stated that the applicant had never challenged the way the witnesses' statements were translated or their authenticity or

veracity. Moreover, the applicant had never asked to hear the tape recording of the witnesses' statements at any stage of the proceedings.

53. They further submitted that the courts had taken into consideration all the circumstances in respect of taking evidence from the respective witnesses, and had paid special attention to giving them proper weight in view of the fact that the applicant had not cross-examined them. The witnesses were warned that giving false statements was a crime. No valid reasons were found by the courts that might cast doubt on the credibility of their statements. They were corroborated by each other and by other evidence examined by the courts. In particular, by the report on the search of the apartment of the applicant's son, where the applicant used to live, the reports on seizure of the narcotics and other evidence.

54. The defence had been given an adequate and proper opportunity to cross-examine the respective witnesses and the Government should not be held responsible for the fact that the defence did not avail itself of this opportunity.

55. The Government contended that the domestic courts enjoyed full discretion in deciding which witnesses to call. In the present case, the domestic court had considered that there was no need to call the two witnesses, as their testimonies were immaterial for the establishment of the facts of the case and sufficient evidence had already been adduced before the court. The applicant's request was submitted as late as 22 January 1998 and the applicant had given no reasons as to why the examination of those witnesses was important for his defence.

B. The Court's assessment

56. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the complaints under Article 6 §§ 1 and 3 (d) taken together (see, among many other authorities, *A.M. v. Italy*, no. 37019/97, § 23, ECHR 1999-IX; and the Van Mechelen and Others v. the Netherlands judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 711, § 49).

57. The Court recalls that, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system; it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words "under the same conditions", is a full "equality of arms" in the matter". The concept of "equality of arms" does not, however, exhaust the content of paragraph 3 (d) of Article 6, nor that of paragraph 1 of which this phrase represents one application among many others (see, among other authorities, the Vidal v. Belgium judgment of 25 March 1992, Series A

no. 235-B, p. 14, § 33; and the Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, § 89).

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 (see, among other authorities, *A.M. v. Italy*, cited above, § 24; the Van Mechelen and Others judgment, cited above, p. 711, § 50; the Doorson v. the Netherlands judgment of 26 March 1996, *Reports* 1996-II, p. 470, § 67; and, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

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. This does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3 (d) and 1 of Article 6, provided the rights of the defence have been respected. As a rule, these rights require that an accused should 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 the Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 56, § 43; the Kostovski v. the Netherlands judgment of 20 November 1989, Series A no. 166, p. 20, § 41; and the Unterpertinger v. Austria judgment of 24 November 1986, Series A no. 110, p. 14, § 31). In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see the Van Mechelen and Others judgment, cited above, p. 712, § 55).

58. The Court recalls that the applicant alleges a violation of Article 6 §§ 1 and 3 (d) of the Convention on essentially two grounds: that his trial was unfair in that he had been unable to cross-examine the witnesses whose statements served as the only basis for his conviction and that he had been unable to obtain the attendance and examination of two witnesses for the defence.

59. It is clear that both lawyers of the applicant were summoned to the hearing of the witnesses. The applicant's argument that his second lawyer was not duly summoned (see paragraph 41) is not supported by the documents since it appears from the summons (see paragraph 15) that the lawyer had signed it, albeit in the wrong place.

60. The Court observes that there is no indication that the applicant or his second lawyer expressed any intention to attend the cross-examination of the witnesses in the United States. In particular, on 4 December 1997 the applicant declared before the investigating judge that he had left the decision whether or not to go to the United States to his second lawyer and that he had sufficient means to cover the travel expenses. The applicant's second lawyer never filed an application for a visa with the United States

Embassy and never requested the postponement of the hearing of the witnesses in case he thought he had not sufficient time to obtain it. Moreover, the applicant's first lawyer never renewed his application for a visa and on 2 December 1997 the applicant withdrew his power of attorney.

61. Turning to the trial and the appellate stage of the proceedings the Court observes that the applicant never complained that he had been unable to cross-examine the respective witnesses due to lack of time or information, nor did he expressly ask for the witnesses to be summoned.

62. It is true that the witnesses' statements played an important role in the applicant's conviction. However, it does not appear that the applicant contested as such their content (see paragraphs 22 and 25). He had not expressly given any questions that he would have liked to be put to the witnesses. Furthermore, it was only at the second hearing that the applicant submitted that he had been unable to cross-examine the witnesses (see paragraph 25).

The domestic courts made a thorough and careful analysis of the witnesses' statements and took into consideration different factors which were of relevance when it came to assessing the credibility of the witnesses, and the veracity and the weight to be given to their statements. Other items of evidence corroborating the witnesses' statements were also examined (see paragraph 24).

63. The Court finds that the present case can be distinguished from *A.M. v. Italy* (cited above) where the witnesses were questioned by a police officer before trial and the applicant's lawyer was not allowed to attend their examination.

64. The Court finds no evidence to support the applicant's allegations that he had expressed the desire to verify the accuracy of the transcripts but was denied that right as the prosecutor's office claimed that the tape recording had been needed for translation.

Moreover, there is no evidence that the applicant requested the courts to be allowed to hear the tape recording either at the trial or the appellate stage of the proceedings. Nor did he object to the way in which the statements had been translated, or complained that their translation had not been accurate. The Court notes that the witnesses took an oath and gave their statements in the presence of a certified court interpreter.

65. As regards the applicant's complaint that he had been unable to obtain the attendance and the examination of two additional witnesses, the Court observes that he had the opportunity to request the summoning of the witnesses during the preliminary investigation, in his submissions that there had been no case to answer, or at the hearings of 12 and 13 January 1998. However, he filed such a request only at the hearing held on 22 January 1998.

66. The Court notes that the addresses of the two witnesses who lived either in Bulgaria or the United States were unknown. Accordingly, it would have been difficult to summon them. Having regard to the reasons invoked by the applicant for hearing these witnesses (see paragraph 26), the Court

finds that the refusal to hear them in the prevailing circumstances was not as such contrary to Article 6 § 3 (d) of the Convention.

67. In conclusion, the Court is satisfied that the applicant was given an adequate and proper opportunity to present his defence. The court's refusal to summon the two additional witnesses did not restrict his defence rights to such an extent that he was not afforded a fair trial within the meaning of Article 6 §§ 1 and 3 (d) of the Convention.

It follows that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

Done in English, and notified in writing on 31 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President