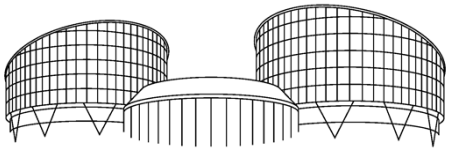

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VASARÁB AND PAULUS v. SLOVAKIA

(Applications nos. 28081/19 and 29664/19)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of witnesses • Domestic courts' refusal, without sufficient reasons, of applicants' request to take and examine witness evidence on their behalf • Trial based essentially on evidence adduced by the prosecution without examination of any of the evidence adduced by the applicants • Overall proceedings fairness of proceedings undermined

STRASBOURG

15 December 2022

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 Vasaráb and Paulus v. Slovakia,

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

Marko Bošnjak*, President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Lətif Hüseynov,
Ivana Jelić,
Gilberto Felici*, judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the applications (nos. 28081/19 and 29664/19) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Slovak nationals, Mr Ladislav Vasaráb ("the first applicant") and Mr Roman Paulus ("the second applicant"), on 25 May and 29 May 2019, respectively;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints under Article 6 §§ 1 and 3 (d) of the Convention concerning the domestic courts' refusal to examine witness evidence adduced by the defence and to declare the remainder of the applications inadmissible;

the parties' observations;

the Chamber's decision to lift the anonymity previously granted to the first applicant (Rule 47 § 7 of the Rules of Court);

Having deliberated in private on 22 November 2022;

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

INTRODUCTION

1. The case concerns the fairness of criminal proceedings against the applicants on a charge of murder, and in particular their being unable to obtain the attendance and examination of witnesses on their behalf, raising issues under Article 6 §§ 1 and 3 (d) of the Convention.

2. The fairness of the proceedings is to be assessed with reference to the role that the evidence in question would have played in them. To facilitate this, the applicant's conviction and its evidentiary basis is described first, with the proceedings and the evidence adduced by them but not taken and examined (*vykonanie dôkazu*) by the courts described afterwards.

3. In addition to the murder of which the applicants were convicted, in the same set of proceedings the first applicant and another individual were charged with but acquitted of the murder of another person. As this is not directly related to the subject matter of the present case, proceedings in

respect of the applicants are described below as concerning the former charge only.

THE FACTS

4. The applicants were born in 1971 and 1977 and normally reside in Diakovce and Pata respectively. They were represented before the Court by Mr L. Štanglovič, and the first applicant also by Mr J. Baláž, lawyers practising in Šaľa and Bratislava respectively.

5. The Government were represented by their Agent, Ms M. Pirošíková, who was succeeded in that function by Ms M. Bálintová.

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

I. THE APPLICANTS' CONVICTION

7. On 23 February 2010 an individual, A., was shot dead while driving a car on a street in Šaľa by another individual who was being driven in another car. The identity of the driver of the other car has never been established.

8. In their findings of fact, which were disputed by the applicants at all stages of the proceedings, the courts established that the shooter was the second applicant and that the killing had been ordered by the first applicant.

9. The precise factual description of the criminal act or failure to act (*skutková veta*) in relation to which the applicants were convicted indicates that (i) the first applicant had contracted the second applicant for the killing in return for a payment of a sum of money, (ii) the first applicant had had "long-standing personal differences" with A., (iii) the first applicant had previously asked another person, B., to act as the driver for the second applicant, but B. had refused, and (iv) the second applicant had asked another person, C., to procure an automatic rifle for him, which C. had done.

10. It was accepted by the courts that the key evidence on which the conviction rested came from B., C. and another individual, D. In particular, the evidence was as follows.

B. testified to having been approached by the first applicant and another person in 2009 with a request to act as a driver for the second applicant with a view to killing someone, which he had refused. He also stated that he had heard utterances by the second applicant which he had understood as implying that the latter had killed A.

C. confirmed that he had been asked by the second applicant to procure an automatic rifle for him and that he had done so. Once he had obtained the rifle, and prior to handing it over to the second applicant, he had tried it out and this was why gunshot residue had been detected on one of his hands after he had been detained by the authorities on the day of the killing. Earlier on that day, he had handed the gun over to the second applicant. Some days later

he had met with the second applicant, who paid him for the gun and said that he had "taken" A., adding that the first applicant had had problems with A., who had previously tried to kill him.

D. stated that he had been told by the second applicant that the latter had killed A. at the first applicant's request.

11. The applicants were found guilty of murder and the second applicant also of unlawful possession of firearms, in respect of which they were sentenced to twenty-two and twenty-five years' imprisonment respectively.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

12. The criminal proceedings in the case commenced on 23 February 2010 and on 18 August 2011 the applicants were charged. Throughout the proceedings they were assisted by defence counsel and pleaded not guilty.

13. On 2 April 2012, upon the completion of the investigation, the applicants were invited to inspect the case file and to identify any further evidence to be taken. They proposed nineteen points on which evidence should be taken. This included evidence from five witnesses to establish the relationship between the first applicant and A., as well as between A. and another person with whom A. had allegedly been in conflict, and from seven other persons to verify the reliability of the evidence given by C. as to his whereabouts on the day when A. was killed.

14. According to the record of the applicants' inspection of the case file, referring to Article 208 § 1 of the Code of Criminal Procedure (Law no. 301/2005 Coll., as amended – "the CCP"), the investigator dismissed the applicants' proposal because "[he did] not consider the taking of that evidence necessary".

15. On 3 April 2012 the investigator requested the Public Prosecution Service ("the PPS") to indict the applicants to stand trial on the above-mentioned charges, explaining that their request for further evidence to be taken had been dismissed "because, on the basis of the evidence already taken, the evidentiary situation was such that the proposals [on the applicants' behalf] would have no impact on it".

16. On 19 April 2012 the bill of indictment was filed with the Specialised Criminal Court ("the SCC"), resting solely on evidence identified by the PPS.

17. On 30 April 2012 the applicants' lawyer submitted a written request that the court take evidence on behalf of the defence on twenty points, which included those mentioned above.

18. On 28 May 2012 the SCC held a public session for a preliminary examination of the indictment. On the matter of his request that further evidence be taken, the applicants' lawyer explained that he sought to verify the submissions of C. as to his whereabouts on the day of the killing (i.e. whether he could have passed the presumed murder weapon to the second applicant) and as to how he had allegedly procured the weapon. At

the pre-trial stage, those submissions had been accepted as fact without any verification at all. Moreover, the evidence proposed would show that the first applicant had had no differences with A. and accordingly no motive to have him killed, and that the differences in question had rather been between A. and the other person previously mentioned.

19. On 11 September 2012 the first applicant made a written submission to the SCC, denying having contracted the killing of A. and submitting that B., C. and D. were under suspicion of various organised criminal activities and arguing that they might have collaborated with the inquiry in return for immunity or in order to take revenge on the applicants.

20. At a hearing held on 19 September 2012 the applicants' lawyer reiterated the request for further evidence to be taken. He pointed out that the evidence from C. was contradictory and not credible, in particular as to his coming and going from a certain restaurant at a time when he was supposedly testing the gun. The authorities had completely failed to enquire into his allegations as to how he had procured the gun and had accepted a single version of the first applicant's motive to have A. killed.

21. In response, the PPS commented that some of the witnesses proposed by the defence had been heard before the bringing of charges against the applicants while several lines of enquiry were being considered. However, after the bringing of the charges, those lines of enquiry had no longer been pursued and it was unnecessary to hear evidence from those persons again.

22. By a procedural decision adopted in the course of the hearing, the SCC refused to take and examine the evidence identified by the defence. Whereas the applicants in their application denied that any reasons had in fact been given for that decision, the following was noted in the record of the hearing:

> "Pursuant to Article 272 § 3 of the [CCP], the court refuses to take and examine the evidence adduced by [the applicants' lawyer] ... in his submission of 30 April 2012 ..., [and] at the hearings on 28 June 2012, 12 September 2012 and others ...
>
> The presiding judge has provided reasoning for her decision and instructed the parties that no legal remedy against it was available."

23. In a judgment of 25 September 2012, the SCC convicted the applicants as indicated above. It acknowledged that the key evidence linking the killing to the applicants was the evidence from B., C. and D. In its judgment it made no reference to the evidence that the applicants had proposed to be taken and examined on their behalf or to its decision not to accept their request.

24. As to the first applicant's motive, and in particular the finding that he had had long-standing personal differences with A., the SCC noted that such differences had resulted in A.'s being charged in 2005 with having arranged for the murder of the first applicant.

25. The applicants appealed, principally arguing that the SCC had based its conclusions solely on evidence on behalf of the prosecution and that the veracity of the witness evidence on which the indictment rested had not been

verified by any means. Specifically, they referred to the evidence they had previously sought to have taken on their behalf. In addition, as to his supposed motive, the first applicant explained that the 2005 incident had involved his being shadowed by unknown persons. It was true that charges had been brought against A. in that connection. Nevertheless, there had been no links between them at all and the conflict referred to by the authorities had in fact been between A. and another person. The witnesses he had sought to have heard would have demonstrated this, as they had done when questioned prior to the bringing of the charges against him.

26. On 3 April 2013 the Supreme Court dismissed the appeals. In so far as relevant, it held that the authorities had adequately established the facts to the extent necessary for their decision, and therefore it found that the taking and examination of further evidence had not been necessary. The Supreme Court concurred that the evidence from B., C. and D. had been central to the establishment of the facts. The ruling of the SCC as to the applicants' guilt "was based on convincing evidence that beyond any doubt excluded any other alternative to the factual storyline established on the basis of that evidence". The Supreme Court further held that the evidence had not been contested by anything but the applicants' own submissions.

27. The applicants appealed on points of law (*dovolanie*). They argued, *inter alia*, that throughout the proceedings they had been denied the right, guaranteed by Article 6 § 3 (d) of the Convention, to obtain the attendance and examination of witnesses on their behalf, which in their view had amounted to a violation of their rights of defence, thus constituting a ground on which an appeal on points of law was admissible under Article 371 § 1 (c) of the CCP.

28. On 25 January 2018 the Supreme Court declared the appeal inadmissible. As to the applicants' argument mentioned above, it held that a court's decision to dismiss a request to take and examine evidence and the absence of reasoning for such a decision could not amount to a ground for the admissibility of an appeal on points of law under the CCP provision relied on.

29. The applicants further pursued their rights by lodging two constitutional complaints under Article 127 of the Constitution, advancing essentially the same arguments as indicated above and relying also on their right to an adversarial trial.

30. The Constitutional Court declared those complaints inadmissible on 4 December 2018 and 30 January 2019 respectively. In sum, it recognised that the courts' findings of fact were "mainly based on incriminating evidence from three specific witnesses, to whom [the second applicant had] personally confessed ... and one of whom [had given] relevant evidence as to the manner in which the weapon used had been procured". Under the subsidiarity principle, the Constitutional Court had no jurisdiction in relation to the SCC. As to the Supreme Court, it had adequately addressed all relevant aspects of

the case. Parties to proceedings did not have a right to have all the evidence proposed by them taken and examined. The decision as to which piece of evidence to take and examine always rested with the court. Therefore, a court's decision not to take and examine evidence proposed by a party, for example because it was immaterial or superfluous, could not be seen as preventing the party from acting before the court.

III. APPLICATIONS FOR THE REOPENING OF THE TRIAL

31. The applicants subsequently applied twice to have the trial reopened on the basis of new evidence. They pointed out that, in another trial on unrelated charges, B. and D. as the accused had submitted that they had been pressured by the police to collaborate with the investigation against the second applicant, leading to his conviction as outlined above. The first applicant also submitted that he had undergone a polygraph test, with the result attesting to his innocence. In addition, he argued that there was a new witness who could testify about the personality of C. and about the fact that the latter had confided in him what he had understood as an admission that the previous accusations against the applicants by C. had been false.

32. The applications were dismissed, with the final decisions being given by the Supreme Court on 20 February 2018 and 10 December 2019. The court stated that it was true that in the other trial B. and D. had submitted that they had been coerced into incriminating the second applicant. However, those submissions had been made by them as the accused, thus exempting them from liability for making false statements. When questioned as witnesses in the proceedings concerning the applicants' application for the reopening of the trial, B. and D. had refused to testify. As the police had denied any wrongdoing, there was in fact no new evidence to support the reopening application. Polygraph testing was not considered to be evidence in court proceedings in Slovakia and the evidence from the new witness was untrustworthy.

RELEVANT LEGAL FRAMEWORK

CODE OF CRIMINAL PROCEDURE

33. Article 2 of the Code defines the fundamental principles of criminal proceedings. Pursuant to paragraph 10, the prosecuting authorities are to proceed with a view to establishing the facts so that there can be no justified doubts (*dôvodné pochybnosti*) about them, and to the extent necessary for their decisions. Evidence is to be obtained as a matter of their official duty. The right to obtain evidence also appertains to the parties. The prosecuting authorities are to elucidate the circumstances weighing against the person facing charges (*obvinený*) and those in his or her favour with equal diligence,

and to take evidence in both directions so as to enable the court to take a just decision.

34. Article 34 defines the rights and duties of the person facing charges. Under paragraph 1, these include the right to propose that a piece of evidence be taken and to submit such evidence.

35. Pursuant to Article 119, by means of criminal proceedings, it must be established, *inter alia*, whether the alleged act or omission (*skutok*) has taken place and whether it fulfils the elements of an offence (paragraph 1 (a)) and, if so, who carried out that act or omission and what the motive for it was (paragraph 1 (b)).

36. Pursuant to Article 168 § 1, a judgment must contain, among other things, reasoning as to why the court refused to take further evidence.

37. Once an investigation is completed, the officer in charge of it is to enable the defence and other persons to inspect the file and make proposals for the investigation to be supplemented. Such proposals may be dismissed if the officer does not consider them necessary (Article 208 § 1).

38. Pursuant to Article 272 § 2, once all the evidence has been taken, the presiding judge is to establish whether the parties have any proposals for further evidence to be taken. Pursuant to paragraph 3 of that Article, a court is to refuse the taking and examination of a piece of evidence if it concerns a circumstance that is immaterial for the decision or can be established by means of other evidence previously proposed. The decision to refuse to take and examine a piece of evidence must be notified to the person who proposed the taking and examination of that evidence. As a general rule, the notification is oral and given at the opening of a hearing. The decision is reversible if in the course of the subsequent proceedings it turns out to be necessary to take and examine the given piece of evidence.

39. The grounds on which an appeal on points of law may be lodged are listed in Article 371 § 1. Under letter (c), these include instances of a fundamental breach of the rights of the defence.

THE LAW

I. JOINDER OF THE APPLICATIONS

40. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

41. The applicants complained that the proceedings against them had been unfair in that the authorities had arbitrarily refused to take and examine

evidence proposed by them. This complaint is to be examined under Article 6 §§ 1 and 3 (d) of the Convention, the relevant parts of which read as follows:

Article 6

"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;

..."

A. Admissibility

42. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicants argued that the proceedings against them had been unfair in that their conviction had been based solely on evidence adduced by the PPS, while they had been denied the right to obtain the attendance and examination of any witnesses on their behalf. Throughout the proceedings at all stages they had requested that evidence from twelve witnesses be obtained and examined. They had specified in detail and repeatedly that this evidence concerned the lack of any motive on the part of the first applicant to have A. killed and the credibility of witness C. and of the evidence he had given. The importance of the motive was emphasised by the fact that it was one of the key elements to be established in criminal proceedings and that, on the specific facts of the present case, the authorities themselves had specifically recognised the importance of the motive by including it in the precise factual description of the criminal acts attributed to the first applicant. The authorities had completely ignored all the evidence proposed by the applicants and had denied them any opportunity to examine the above-mentioned witnesses, even though their identity had been known to them. Any explanation in that regard had been given superficially and indiscriminately by way of citing the respective legal provisions but had contained no element of actual individual reasoning. The explanation had accordingly been given merely for the sake of appearances. In a situation where all the proposals submitted by the

prosecution for the taking and examination of evidence had been accepted, there had been an obvious inequality of arms. Rather than ensuring observance of this principle, the domestic courts had acted as a proxy of the prosecuting authorities. The absence of reasoning for the refusal to take and examine evidence on the applicants' behalf had, moreover, been unlawful under domestic law, in particular in so far as it specifically required such reasoning to be included in judgments entailing a conviction.

44. As to the Government's arguments in reply (see the subsequent paragraphs), the applicants considered them to be an attempt at trivialising the problem. Their subsequent applications for the reopening of the proceedings and the dismissal of those applications had had no bearing on the present case, as they had not involved any consideration of the issues to which it related. Furthermore, the statement of the presiding judge of the SCC chamber sitting in their case (see paragraph 47 below) attested to no more than the fact that the reasons why they had sought the examination of the evidence in issue had been perfectly clear. Lastly, in so far as any of the witnesses proposed by them had been interviewed prior to the bringing of the charges against the applicants, such interviews had taken place without the applicants being present and accordingly had not afforded them an opportunity to exercise their rights of defence.

45. The Government pointed out that issues of admissibility of evidence were primarily matters for the domestic law and the domestic courts, the Court's role being limited to the assessment of the fairness of the proceedings as a whole. The present case fell to be examined under the criteria reflected in *Murtazaliyeva v. Russia* ([GC], no. 36658/05, 18 December 2018). The core of the instant case had been the witness evidence proposed by the defence to undermine the credibility of C. and to establish the relationships of A. that were relevant to the motive to have him killed. However, in addition to the evidence from C., the applicants' conviction had also rested on evidence from other witnesses, including B. and D. The proposals by the defence had been examined and dismissed by the investigator, the PPS, the courts at three levels and ultimately the Constitutional Court. In particular, the SCC had examined the proposal at a hearing, following comments by the PPS, and the record of the hearing indicated that the reasoning for that decision had been given. Moreover, further evidentiary matters had been examined in the context of the applicants' applications for the reopening of the trial.

46. The Government argued that the domestic courts had adequately examined the relevance of the evidence proposed by the applicants and that, even though the decision to refuse to take and examine it had given no specific reasons, it was obvious that the reason had been that the other evidence already taken had unequivocally provided a complete picture, in view of which the taking of further evidence had been unnecessary, as recognised by the Supreme Court, sitting as the court of appeal.

47. The Government submitted a statement issued on 15 November 2019 for the purposes of the proceedings before the Court by the presiding judge of the chamber of the SCC sitting in the applicants' case. She acknowledged that the defence had requested the taking and examination of the evidence in issue in writing as well as orally and she summarised the specific witnesses the applicants had sought to have heard and the specific purposes of their examination. Stating that the applicants' conviction had rested on ample evidence and mentioning the evidence from witnesses B., C. and D. individually, the presiding judge added:

> "... On the basis of the assessment of the admissibility and relevance of [the other] evidence, the court concluded that it was sufficient for a decision on guilt [and] punishment, [whereas] the proposal of evidence on behalf of the defence did not provide a sufficient explanation of its significance for the establishment of the true factual picture."

48. Lastly, the Government submitted that some of the witnesses proposed by the applicants had been heard prior to the bringing of charges against the applicants. As they had submitted nothing that had been seen as relevant, it had not been necessary to hear those witnesses again. As the applicants had at all times been represented by lawyers and had had unrestricted opportunities to exercise their rights of defence, the proceedings as a whole had been fair.

2. The Court's assessment

(a) General principles

49. The Court reiterates at the outset that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that Article, which must be taken into account in any assessment of the fairness of proceedings (see, for example, *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015, with further references).

50. The Court further reiterates that under Article 6 of the Convention the admissibility of evidence is primarily a matter for regulation by national law and the Court's task 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 many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports* 1997-III, and *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). Article 6 § 3 (d) of the Convention does not require the attendance and examination of every witness on the accused's behalf, the essential aim of that provision, as indicated by the words "under the same conditions" is to ensure a full "equality of arms" in the matter (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22; *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B; and *Murtazaliyeva v. Russia* [GC], cited above, § 139).

51. In the judgment last cited (§ 158) the Court has formulated the following three-pronged test for the assessment of whether the right to call a witness for the defence under Article 6 § 3(d) has been complied with: (1) whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation; (2) whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial; and (3) whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings.

52. In respect of the first element the Court held that it is necessary to examine whether the testimony of witnesses was capable of influencing the outcome of a trial or could reasonably be expected to strengthen the position of the defence. The "sufficiency" of reasoning of the motions of the defence to hear witnesses will depend on the assessment of the circumstances of a given case, including the applicable provisions of the domestic law, the stage and progress of the proceedings, the lines of reasoning and strategies pursued by the parties and their procedural conduct (ibid., §§ 160-161).

53. As to the second element of the test, the Court explained that generally the relevance of testimony and the sufficiency of the reasons advanced by the defence in the circumstances of the case will determine the scope and level of detail of the domestic courts' assessment of the need to ensure a witness' presence and examination. Accordingly, the stronger and weightier the arguments advanced by the defence, the closer must be the scrutiny and the more convincing must be the reasoning of the domestic courts if they refuse the defence's request to examine a witness (ibid., § 166).

54. With regard to the overall fairness assessment as the third element of the test, the Court stressed that compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident. While the conclusions under the first two steps of that test would generally be strongly indicative as to whether the proceedings were fair, it cannot be excluded that in certain, admittedly exceptional, cases considerations of fairness might warrant the opposite conclusion (ibid., §§ 167-168).

(b) Application of the above principles to the circumstances of the present case

55. The applicants in the present case were prosecuted for serious offences set against a complex background of organised crime. It was accepted at the national level and has not been contested before the Court that key evidence in the case against them came from witnesses B., C. and D. It was in particular that evidence and the first applicant's motive as established by the domestic courts that linked them to A.'s murder. A part of that evidence, that from C., was of especial significance because, unlike the evidence from B. and D., which was predominantly hearsay, C. himself

testified to having supplied the second applicant with what would later be established as the murder weapon.

56. The case revolves around the applicants' request for witness evidence to be taken and examined, which they submitted in writing on 2 and 30 April 2012 and orally on 28 May and 19 September 2012 (see paragraphs 13, 17, 18 and 20 above). Those requests concerned the taking and examination of evidence on some twenty points, including from twelve specific witnesses.

(i) Whether the request to examine witnesses was sufficiently reasoned and relevant to the subject matter of the accusation

57. At the national level, the applicants specified that the witnesses in question were to be heard as regards A.'s relationships to the first applicant and to another person and as regards the whereabouts of C. on the day when A. had been killed and his alleged procurement of the murder weapon for the second applicant.

58. In the applicants' submission, the question of A.'s relationships to the above-mentioned individuals was relevant to the domestic court's finding as regards the first applicant's motive to have A. killed. In that connection, the Court notes that the importance of this question is recognised in that, *inter alia*, it is one of the questions that a judgment entailing a conviction must address (see paragraph 35 above). Moreover, on the facts of the present case, the motive of the first applicant established by the courts was also included in the precise factual description of the criminal act in relation to which he was convicted (see paragraph 9 above).

59. As to the evidence that the applicants sought to have taken and examined in relation to C., they explained that they had been seeking to challenge his version of having obtained the murder weapon, tested it and passed it on to the second applicant since, in the applicants' submission, his allegations had been accepted by the authorities without any verification, despite containing many incongruities.

60. As the evidence in question could have had a bearing on the first applicant's motive as a structural element of the case and on the credibility of the evidence from a key witness against the applicants, the Court finds it prima facie relevant to the subject matter of the accusation against them.

(ii) Whether the domestic courts considered the relevance of the evidence and provided sufficient reasons for not examining witnesses at trial

61. The applicants' request for the witness evidence to be taken and examined was submitted at the pre-trial stage of the proceedings, during the preliminary examination of their indictment, during their trial and in their subsequent appeals and constitutional complaints.

62. The response on the part of the investigator and the SCC mainly consisted in referring to the applicable procedural rules, which in general

allow for the refusal of requests for further evidence to be taken and examined if this is unnecessary or if the evidence is immaterial or superfluous (see paragraphs 14, 22, 37 and 38 above). There is nothing to support any suggestion that the "reasoning" of the procedural decision of the SCC of 19 September 2012 on that matter, as noted in the record of the hearing at which it was taken, contained anything in addition to the simple reference to the applicable rules.

63. The investigator and Supreme Court, sitting as the court of appeal, also added what may be understood as an observation that the evidence proposed by the applicants would not have had any impact on the facts as already established on the basis of other evidence and that there was nothing to contest the factual findings already made, other than the applicants' own allegations (see paragraphs 15 and 26 above). In this connection, the Court notes the general tenor of that assessment, which was not supported by any case-specific elements. Even though some of the witnesses asked for by the applicants had been interviewed prior to the bringing of the charges against them, none of the authorities involved in the consideration of their requests for the taking and examination of further evidence specified in any detail why the evidence to be given by those witnesses would have been irrelevant or incapable of rebutting the findings made on the basis of other evidence. In such a context, it may appear paradoxical to conclude, without looking at the evidence proposed, that there was nothing but the applicants' own allegations that went against the facts that had already been established.

64. In a similar vein, the courts found that the first applicant's motive rested on the uncontested fact that A. had previously been charged with the attempted murder of the first applicant. However, the first applicant himself consistently disputed having had any contact or conflict with A. and adduced evidence to show that it was in fact another person who had motive to have A. killed. In the absence of any details as to the status of the charge against A. and any other reasoning on the part of the domestic courts for not hearing the evidence adduced, the Court does not find sufficient grounds for the conclusion that the evidence adduced was not relevant to the subject matter of the accusation against the applicants.

65. Furthermore, as to the SCC, the Court notes that although the applicable procedural rules specifically required that in a judgment entailing a conviction it should elaborate on why it refused to take further evidence (see paragraph 36 above), its judgment of 25 September 2012 did not address this issue in any way.

66. In addition to the above, when sitting as the cassation court, the Supreme Court found that the applicants' appeal fell outside its jurisdiction, and that position was in principle endorsed by the Constitutional Court (see paragraphs 28 and 30 above). Therefore, neither of those courts actually examined the justification for the refusal by the lower courts to take and examine the evidence in issue.

67. To the extent the Government relied on the fact that some of the witnesses identified by the applicants had been interviewed prior to the bringing of the charges against the applicants, this has no bearing on the assessment of the applicants' complaint before the Court because no such statements were in fact presented to and examined by the domestic courts. Moreover, there has been no suggestion that the applicants were present at those interviews and could accordingly exercise their defence rights on that occasion.

68. As the Government have themselves admitted, no specific reasons were given by the courts in the present case in response to the applicants' request for evidence on their behalf to be taken and examined (see paragraph 46 above). Thus, even assuming that the relevance of the evidence in issue was in fact adequately considered, the domestic courts cannot be said to have provided sufficient reasons for not taking and examining it.

(iii) Whether the domestic courts' decision not to examine the witnesses undermined the overall fairness of the proceedings

69. The applicants' trial took place essentially on the basis of prosecution evidence, with no indication that any evidence proposed by the prosecution would not have been taken and examined by the courts. In other words, all evidence adduced by the prosecution was examined by the courts. In contrast to that, none of the evidence adduced by the applicants was examined, even though they had consistently made requests to that effect throughout the proceedings at all stages.

70. The CCP provides, as one of the fundamental principles of criminal proceedings in Slovakia, that the prosecuting authorities are to investigate with equal diligence the circumstances weighing against persons facing charges as well as those in their favour (see paragraph 33 above). However, there is no indication that they so did on the facts of the present case. On the contrary, the picture emerging from the facts of the case appears to suggest that the authorities only examined one version of the facts and actively refused to examine the version presented by the applicants.

71. Moreover, the Court notes that the key witnesses B., C. and D. were themselves potentially implicated by various underlying facts and that the first applicant's suggestion that they might have incriminated the applicants in return for immunity (see paragraph 19 above) does not appear to have resulted in any investigative measures. This was not remedied by any examination, in the context of the applicants' reopening applications, of the suggestion made by B. and D. in other proceedings that they had been coerced into incriminating the second applicant (see paragraph 32 above).

72. In this connection, the Court reiterates that the use of statements given by witnesses in return for immunity or other advantages may cast doubt on the fairness of the proceedings against the accused and can raise difficult issues to the extent that, by their very nature, such statements are open to

manipulation and may be made purely in order to obtain the advantages offered in exchange, or for personal revenge. The risk that a person might be accused and tried on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated (see *Adamčo v. Slovakia*, no. 45084/14, § 59, 12 November 2019, with a further reference).

(iv) Conclusion

73. The above considerations are sufficient for the Court to conclude that, in view of how the domestic courts responded to the applicants' request for the examination of witnesses on their behalf, the proceedings as a whole were unfair.

74. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

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

A. Damage

76. The applicants claimed compensation in respect of non-pecuniary damage as follows.

77. In a submission of 20 July 2020, the first applicant claimed 10,000 euros (EUR). In a subsequent submission, dated 25 July 2020, he claimed EUR 5,000,000 under the same head, arguing that this was in respect of deprivation of liberty and interference with his private and family life which he considered to have been unlawful. In a further submission, dated 19 August 2020, the first applicant specified that it was the latter claim that was to be taken into account.

78. The second applicant for his part claimed EUR 10,000 in respect of frustration, anxiety and injustice resulting from his inability to defend himself in the proceedings against him.

79. In reply, the Government pointed out that any violation to be found in this case was procedural in nature and submitted that both claims had been manifestly overstated. Moreover, they were of the view that in the event of a finding of a violation of the applicants' rights, they would be able to seek the reopening of the proceedings in their case, which in the Government's view was the most appropriate form of redress.

80. The Court notes that the first applicant's claim is based on the premise that his conviction was wrongful. However, the Court cannot speculate as to

the outcome of proceedings against him had they been in conformity with the requirements of Article 6 §§ 1 and 3 (d) of the Convention. The finding of a violation of those provisions in the present case does not therefore imply that the applicants were wrongly convicted.

81. Either way, the Court considers that on the facts of the present case, the finding of a violation constitutes sufficient just satisfaction. It notes that, following this finding, the domestic law entitles the applicants to challenge the conclusions of the domestic courts by means of an application for the reopening of the proceedings (see *Zachar and Čierny v. Slovakia*, nos. 29376/12 and 29384/12, § 85, 21 July 2015, with further references). The Court therefore rejects the applicants' claims (see *Dvorski v. Croatia* [GC], no. 25703/11, § 117, ECHR 2015, with further references).

B. Costs and expenses

82. No claim under this head having been made, there is no call for any award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President