



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

FOURTH SECTION

**CASE OF CEROVŠEK AND BOŽIČNIK v. SLOVENIA**

*(Applications nos. 68939/12 and 68949/12)*

JUDGMENT

STRASBOURG

7 March 2017

*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 Cerovšek and Božičnik v. Slovenia,**

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

András Sajó, *President*,

Vincent A. De Gaetano,

Nona Tsotsoria,

Krzysztof Wojtyczek,

Iulia Motoc,

Gabriele Kucsko-Stadlmayer,

Marko Bošnjak, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 31 January 2017,

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

## PROCEDURE

1. The case originated in two applications (nos. 68939/12 and 68949/12) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovenian nationals, Mr Silvo Cerovšek (“the first applicant”) and Mr Štefan Božičnik (“the second applicant”), on 8 October 2012.

2. The applicants were represented by Mr D. Medved, a lawyer practising in Krško. The Slovenian Government (“the Government”) were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

3. The applicants alleged, in particular, that Article 6 of the Convention had been violated as the reasons for the verdicts against them had not been given by the judge who had reached them.

4. On 8 April 2015 the above complaint was communicated to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1962 and lives in Bizeljsko. The second applicant was born in 1946 and lives in Artiče.

6. The applicants were charged in 2005 and 2006 respectively of committing theft by cutting down and taking trees from a forest belonging

to another person and appropriating the wood. They were tried by a professional judge, A.K., sitting as a single judge.

7. The first applicant stated in his defence in the proceedings against him that he had cut down trees which had been marked for cutting or had been attacked by bark beetle in his own forest. In the course of the proceedings against the first applicant Judge A.K. examined a number of witnesses during the main hearing, inspected the place of the alleged offence and examined a number of other documents, including a sketch and a copy of the land register map. None of the witnesses testified that they had seen the first applicant cutting down trees on the injured party's plot of land. However, they testified about a number of other circumstances in relation to the charges, for example similarities in the way the trees had been cut down on the first applicant's land and on that of the injured party, traces of the transport of trees, the fact that the first applicant had regularly sold wood and that he had also cut down unmarked trees on his own land. One of the witnesses also testified that he had seen the first applicant and another person, B.K., transporting trees over the injured party's land. Another witness, the injured party's husband, testified that B.K. had indirectly confirmed his involvement in cutting down the trees in question. B.K., however, stated that he believed that he had only cut down marked trees on the first applicant's land. The court also appointed an expert, who estimated that the value of the allegedly stolen wood amounted to 2,028 euros (EUR).

8. The second applicant was charged with two counts of theft. In the course of the proceedings against him, Judge A.K. heard a number of witnesses at the main hearing and examined several documents, including copies of the relevant land register maps. In respect of the first charge, the second applicant maintained that he had mistakenly thought that he had been cutting down trees on his own land, whose borders had been shown to him by the former owners, F.H. and J.H., who also appeared as witnesses in the proceedings. The husband of the injured party, M.P., stated that they had found out about the stolen wood six months after the event and that neighbours had told them that the second applicant had been seen in the forest at the time, while another person, I.T., had been seen transporting the wood. He also testified that the second applicant had admitted to him that he had cut down the trees, thinking that they had belonged to his land but that they had failed to agree on how much the second applicant should pay M.P. in compensation. I.T. stated that he had helped the second applicant transport the wood and that he had been told by him that the land belonged to him, which I.T. had found suspicious. Another witness, S.P., stated that he had helped I.T. load the truck with the wood. As to the second charge, the second applicant argued that he had had an agreement with the injured party in that case, F.B., that he could cut down trees in exchange for wine. The judge questioned the injured party, who denied the existence of such an agreement. The court also appointed an expert, who estimated that the value

of the beech and hornbeam trees cut down amounted to EUR 457 and that of the acacia trees at EUR 440.

9. On 21 June 2007 Judge A.K. found the first applicant guilty of taking another's movable property with the intention of unlawfully appropriating it, and sentenced him to six months in prison, suspended for three years. The judge found that the applicant had cut down and taken eight oak trees in a forest without the knowledge of its owner and had appropriated wood worth EUR 2,028. She ordered him to either deliver to the injured party the same quantity of oak that had been taken from the forest or to pay compensation of EUR 2,028. She pronounced a guilty verdict and sentenced him (*izrek*, hereinafter referred to as "the verdict") orally.

10. On 2 July 2007 Judge A.K., again giving an oral verdict, found the second applicant guilty of taking another's movable property with the intention of unlawfully appropriating it and sentenced him to seven months in prison, suspended for three years. She found that the second applicant had cut down and taken three beech trees and nine hornbeams worth at least EUR 457 and two hundred acacia trees worth at least EUR 440 from land belonging to other persons. Moreover, the second applicant was ordered to pay compensation of EUR 457 and EUR 440 respectively to the two injured parties.

11. The Government submitted that Judge A.K., when pronouncing the verdict, had also given an oral summary of the main reasons (see paragraph 34 below), however, no indication of that can be found in the records of the hearing.

12. After hearing the verdict both applicants gave notice of their intention to appeal, which gave rise to an obligation on the part of Judge A.K. to draw up written grounds for her verdicts (see paragraph 23 below).

13. A.K. later retired on an unspecified date and the case files in both applicants' cases got lost. In 2010, the local court reconstituted the files.

14. Based on the documents contained in the restored case file, Judge D.K.M. delivered written grounds for the verdict pronounced by Judge A.K. (see paragraph 9 above), which were served on the first applicant's counsel on 17 August 2010. In her reasoning, the judge relied on the records of the hearings, the transcript of the inspection of the location and other documents in the file. The judge did not believe the applicant's version of events and dismissed B.K.'s statements as biased because he had been working for the first applicant. She also found his testimony to be in contradiction with some of the other witness statements. The court relied heavily on the finding that while B.K. had cut down the trees professionally on the applicant's land, witness testimony showed that certain trees had been cut down in an unprofessional manner on both the applicant's and the injured party's land, and that the first applicant and B.K. had been seen transporting trees over the injured party's land.

15. The written grounds in the second applicant's case (see paragraph 10 above) were delivered by Judge M.B., who also based them on the documents contained in the restored case file. They were served on his counsel on 17 June 2010. As to the first charge, the judge found that the second applicant's defence had not been convincing. In particular, the judge considered the statements of two witnesses, F.H. and J.H., to be unpersuasive. On the other hand, the judge relied on the statements of the injured party and her husband, supported by other evidence, for example, the expert's opinion, the statements of the witnesses S.P. and I.T. and the copy of the land register map showing that M.P.'s land did not border on the second applicant's. As to the second charge, the court relied predominantly on the statement of the injured party, F.B., who denied that he had had an agreement with the second applicant. Other evidence, such as the expert's opinion and photographs, confirmed that F.B. was indeed the owner of the land and indicated the number of trees that had been cut down.

16. Both applicants appealed against the judgments, raising similar arguments as those submitted to the Court (see paragraph 32 below). They further alleged that the judgments should have been set aside and remitted to the first-instance court for fresh consideration. Furthermore, both applicants also appealed against the factual findings on which their convictions had been based, including the assessment of the credibility of a number of witnesses. The second applicant also complained about the assessment of the existence of intent on his part to commit the second count of theft.

17. On 26 August and 25 November 2010 respectively, the Ljubljana Higher Court dismissed the applicants' appeals, holding that the fact that the written grounds of the impugned judgments had been given a few years after they had been delivered orally had not rendered the judgments unlawful. The higher court emphasised that the impugned judgments had been based on facts established in adversarial proceedings and on evidence given at hearings which the applicants had been able to challenge by presenting their own versions of the events at issue. The first-instance judgments had been given orally by Judge A.K. who had presided over both applicants' hearings, had questioned the applicants and heard the witnesses. Moreover, the written grounds had disclosed on what evidence the judges providing them had relied and how they had assessed the reliability of the applicants' statements. In the higher court's opinion, the written grounds had been clear and reasonable. As regards the first applicant, the higher court reassessed the evidence, including the witness statements, and came to the same conclusion as the first-instance court. As to the second applicant, the higher court noted that the first-instance court had truthfully and accurately established all the relevant facts of the case, and that it had been proven that the second applicant had intended to commit the second offence.

18. On 13 October 2010 and 20 January 2011 respectively, the applicants lodged applications for the protection of legality (*zahteva za varstvo zakonitosti*) with the Supreme Court, raising similar arguments as those submitted to the Court (see paragraph 32 below) and referring to the Constitutional Court's decision of 11 October 2006 (see paragraph 28 below).

19. On 6 January and 1 September 2011 respectively, the Supreme Court dismissed the applicants' applications for the protection of legality, holding that only the operative part of the judgment, namely the verdict, could have interfered with the rights of the parties, while the purpose of written grounds was to enable a decision to be reviewed by higher instances. As a rule, the written grounds of a judgment were given by the judge who had conducted the trial and pronounced the verdict. However, in certain situations, such as when a judge was absent for a long time or died, the law had to be interpreted as permitting another judge to give the written grounds. In such cases, the judge who wrote the judgment based it on logical reasoning and the evidence in the file. The Supreme Court found that while the principle of immediacy required that a verdict should be given by the judge who had participated in the trial, the act of writing a judgment, was not, strictly speaking, part of the trial. Moreover, if the written grounds for a judgment were not convincing, a defendant had a better chance of succeeding with his or her appeal. Having regard to those considerations, the Supreme Court took the view that the applicants' rights of defence had not been violated.

20. On 1 April and 2 December 2011 respectively, the applicants lodged constitutional complaints, reiterating the arguments they had made before the lower courts.

21. On 3 April 2012 the Constitutional Court refused to admit the applicants' constitutional complaints, holding that their cases concerned neither a violation of human rights having serious consequences for them nor an important constitutional question.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Criminal Procedure Act

22. In accordance with section 360 of the Criminal Procedure Act (Official Gazette no. 63/94 with the relevant amendments), a presiding judge pronounces the verdict immediately after the court has passed it. If, however, the court is unable to pass a verdict on the day of the trial, pronouncement can be postponed by a maximum of three days. The verdict is pronounced by reading the operative part of the judgment in open court and in the presence of the parties and counsel, whereupon the presiding judge gives a brief statement about the grounds for the verdict.

23. In accordance with section 368 of the Criminal Procedure Act, the written grounds for a judgment must be provided when a term of imprisonment is imposed or when those entitled to appeal against the judgment give notice of appeal within the given deadline. Section 363 of the Act provides that a judgment is drawn up in writing within thirty days of its pronouncement, unless the defendant is in detention. If a judgment is not drawn up within that time, the presiding judge informs the president of the court of the reasons for that delay. The president of the court is then required to take the necessary steps to have the judgment drawn up as soon as possible.

24. The relevant provision concerning the content of a written judgment reads as follows:

#### **Section 364**

“(1) A judgment set down in writing shall be in full accord with the judgment that was given orally. It shall have an introductory part, an operative part and a statement of grounds.

...

(6) In the statement of grounds the court shall indicate the reasons for each individual point of the judgment.

(7) The court shall indicate clearly and exhaustively which facts it considered proven or not proven, as well as the reasons thereof. The court shall indicate in particular how it assessed the credibility of conflicting evidence, its reasons for denying certain motions by the parties, and the key considerations which guided the court in settling points of law and, in particular, in establishing whether a criminal offence and criminal liability existed on the part of the defendant, as well as in applying specific provisions of criminal law to the defendant and his act.

(8) If a sentence for criminal liability has been imposed on the defendant, the statement of grounds should show which circumstances the court took into consideration in determining the punishment. The court shall in particular indicate which reasons were decisive in its decision to impose a heavier sentence than that prescribed (Article 46 of the Penal Code), or to reduce or remit the sentence, or to impose a suspended sentence or pronounce a security measure or confiscation of proceeds.

....”

25. The relevant provisions setting out the grounds on which a judgment can be challenged on appeal read as follows:

#### **Section 370**

“A judgment may be challenged:

- 1) on the grounds of a substantial violation of the provisions of criminal procedure;
- 2) on the grounds of a violation of criminal law;
- 3) on the grounds of an erroneous or incomplete determination of the facts;

....”



**Section 371**

“(1) A substantial violation of the provisions of criminal procedure shall be deemed to exist:

1) where the court was not properly constituted or those reaching the judgment included a judge or a lay judge who did not attend the main hearing or was excluded from adjudication under a final decision;

...

11) where the operative part of the judgment is incomprehensible or contradictory or contradicts the reasoning of the judgment; where the judgment lacks grounds altogether or reasons relating to crucial facts are not given or are completely vague or largely contradictory; or where there is a considerable discrepancy between the statement of grounds referring to documents or the records of statements given in the course of proceedings on the one hand, and the content of those documents or records on the other.

...”

**Section 373**

“(1) A judgment may be challenged on the grounds of an erroneous or incomplete determination of the facts where the court erroneously determined a decisive fact or omitted to determine it altogether.

...”

**Section 383**

“(1) The second-instance court reviews the part of the judgment that has been challenged on appeal. However, it should always review of its own motion:

1) whether criminal procedure rules have been breached, as set out in points 1, 5, 6 and 8 to 11 of the first paragraph of section 371 of this Act, or where the main hearing was conducted in the absence of the accused person ...

2) whether the criminal law has been breached to the detriment of the accused person (section 372).

...”

26. Under section 392 of the Criminal Procedure Act, in cases where a substantial violation of the provisions of criminal procedure has been found or where the facts of the case need to be properly established at a new hearing before the first-instance court, the second-instance court may revoke the first-instance court’s judgment and remit the case for re-examination to the same or a different first-instance panel. If during an appeal considerable doubts arise as to the veracity of the decisive fact and, as a result, the second-instance court considers that the circumstances of the case have been wrongly or insufficiently established to the detriment of the accused, the second-instance court may revoke the first-instance judgment even if the appellant does not challenge the establishment of the facts.

27. Under section 379 of the Criminal Procedure Act, a second-instance court may decide on an appeal during a session or it may decide to hold a

hearing in the matter. It holds a hearing when the facts of the case need to be established again and there are good reasons for not remitting the case to the first-instance court for re-examination (section 380 of the Criminal Procedure Act).

### **B. Decision no. Up-30904 of the Constitutional Court**

28. In decision no. Up-30904 of 11 October 2006 the Constitutional Court held that the essence of the principle of immediacy was that a judicial decision should be issued by the judges who participated in the hearing where the parties made their statements and at which the court examined all the evidence. According to the court, judges could gain insight into the characteristics or particularities of an individual piece of evidence and form a subjective opinion on the credibility of witnesses only if they directly participated in the examination of evidence so that they, through their own senses (and not through an intermediary), perceived the nature and the contents of individual items of evidence.

## **THE LAW**

### **I. JOINDER OF THE APPLICATIONS**

29. The Court considers that in accordance with Rule 42 § 1 of the Rules of Court the applications should be joined, given their similar factual and legal background.

### **II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION**

30. The applicants complained that their right to a fair trial had been violated because the reasons for their conviction had been given by judges who had not reached the verdict and had not participated in the trial. They relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

#### **A. Admissibility**

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' arguments*

32. The applicants argued that the criminal proceedings against them had been unfair owing to the fact that the judge who had conducted the trial and had convicted them had not given reasons for her decision. Instead, written judgments had been given, three years later, by judges who had not participated in the applicants' trials. Those judges had had to justify a decision which had not been theirs and had therefore not had freedom of action. The applicants argued that the separation of the roles of the judge who had conducted the trial and pronounced the verdicts in their case and the judges who had then written the judgments had not been envisaged in the relevant legislation and had not been consistent with the principle of immediacy. They alleged in this connection that the credibility of their defence and the witnesses' statements had been decided by judges who had not been able to make any direct assessment of those statements and arguments.

33. The applicants, moreover, argued that the breach of their right to a fair trial had not been remedied by the higher courts.

34. The Government asserted that the proceedings against the applicants had been fair. In particular, the applicants had not shown that the reasoning in the written judgments had been incorrect or deficient. Referring to the Supreme Court's view (see paragraph 19 above), they argued that the principle of immediacy had been respected because the verdict had been given by Judge A.K., who had directly observed and examined the evidence. All the evidence in the present case had been presented at the main hearing, which had been presided over by A.K. The latter had pronounced her verdict and had given brief reasons for it orally, as required by the procedural law (see paragraph 22 above.) The verdict had been binding and could only have been overturned on appeal. The Government further submitted that it was only the verdict that had become final and that the reasoning had served merely to control the correctness of the verdict by way of appeal.

35. The Government further argued that although, as a rule, the same judge that reached the verdict should also give the written grounds for it, there could always be exceptional circumstances that prevented this from happening, such as death, sickness or other events leading to the suspension of the judicial function. Such circumstances were not explicitly regulated in the legislation, but it was reasonable to assume that when they came about the written grounds were to be prepared by another judge, otherwise the

case could become time-barred. A judge asked to draft the written grounds in such exceptional circumstances based them on documents, including the records of hearings, and not on a direct assessment of witnesses' credibility. In that connection, the Government pointed out that neither of the applicants had disputed the exactness of the court transcripts.

36. Lastly, the Government argued that the higher court had examined the written grounds in both cases and had found that they complied with the requirements set out in law (see paragraph 25 above).

## 2. *The Court's assessment*

37. The Court reiterates that in determining issues of the fairness of proceedings for the purposes of Article 6 of the Convention, it must consider the proceedings as a whole, including the decisions of the appellate courts. Moreover, it is not its function to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety were fair (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34; *Mishgjoni v. Albania*, no. 18381/05, § 49, 7 December 2010; and *Saranchov v. Ukraine*, no. 2308/06, § 45, 9 June 2016).

38. In the present case, the Court is called upon to determine whether the applicants had a fair trial despite the fact that the reasons for the verdicts, that is their conviction and sentence, were not given by the judge who had pronounced them but by other judges, who had not participated in the trial.

39. The Court begins by noting that the present case concerns a trial before a professional judge sitting as a single judge (see paragraph 6 above) and, secondly, that the applicants' situation was a departure from the procedure envisaged in the Slovenian Criminal Procedure Act. Indeed, pursuant to that Act, the judge who conducts the trial and who deals directly with the evidence is supposed to give the verdict and provide written reasons relating to the relevant factual and legal aspects of it, if so requested by the parties (see paragraphs 22 to 24 above). The situation in the present case, referred to by the Government as being of an exceptional nature (see paragraph 35 above), arose because the judge who had examined all the evidence produced during the trial had retired after pronouncing her verdict, without providing written grounds.

40. The Court takes note of the Government's position, which is a reiteration of the view of the Supreme Court, that the failure of the judge who had conducted the trial to issue written grounds could have had no impact on the fairness of the trial because the primary purpose of such grounds was to allow for review of the verdict by way of appeal (see paragraphs 19 and 34 above). However, it cannot agree with that assertion. It reiterates that although the grounds for the decision are indeed relevant in that they make it possible for the accused to exercise usefully the right of

appeal (see *Hadjianastassiou v. Greece*, no. 12945/87, 16 December 1992, § 33, Series A no. 252), that is to make full and proper use of that right, they are also important in a more general sense in that they ensure the proper administration of justice and prevent arbitrariness (see, *mutatis mutandis*, *Lhermitte v. Belgium* [GC], no. 34238/09, § 67, 29 November 2016). In particular, the Court notes that a judge's awareness that he or she has to justify his or her decision on objective grounds provides one of the safeguards against arbitrariness. The duty to give reasons also contributes to the confidence of the public and the accused in the decision reached (see, *mutatis mutandis*, *Taxquet v. Belgium* [GC], no. 926/05, § 91, ECHR 2010, and *Lhermitte*, cited above, § 67) and allows for possible bias on the part of the judge to be discerned (see, for instance, *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 119 and 130-133, ECHR 2005-XIII), and remedied by, for instance, a rehearing before another judge or judges.

41. In the present case, the aforementioned purpose of the requirement to give reasons could not be achieved since the judge who conducted the trial, A.K., did not set down the reasons that had persuaded her to reach her decision on the issue of the applicants' guilt and their sentence. Furthermore, there is no indication in the records of the hearing that she gave any reasons orally (see paragraph 11 above). The written grounds given by Judges D.K.M and M.B. (see paragraphs 14 and 15 above), which were put together *post hoc* some three years later, and, as appears from the evidence before the Court, had no input from Judge A.K., could not compensate for that deficiency.

42. In addition, the Court is mindful of the two judges' lack of involvement in the evidence-gathering process. It observes that Judges D.K.M and M.B. did not participate in the trials in any way and drew up their grounds solely on the basis of the written case files. By contrast, Judge A.K.'s verdict was not based on documents only. In particular, Judge A.K. heard the applicants during the trial, examined a number of witnesses and must have formed an opinion as to their credibility. She must also have made an assessment of the elements of the alleged offences, including the subjective element, namely the applicants' intention to commit them, for which the direct hearing of the applicants was particularly relevant (see paragraphs 7 and 8 above, and *Cutean v. Romania*, no. 53150/12, § 66, 5 February 2014).

43. Therefore, as recognised through the principle of the immediacy in criminal proceedings (see *Cutean*, cited above, §§ 60 and 61, and *P.K. v. Finland* (dec.), no. 37442/97, 9 July 2002; see also the Slovenian Constitutional Court's decision of 11 October 2006 cited in paragraph 28 above), Judge A.K.'s observation of the demeanour of the witnesses and the applicants and her assessment of their credibility must have constituted an important, if not decisive, element in the establishment of the facts on which the applicants' convictions were based. In the Court's view, she should, for

precisely that reason, address her observations in the written grounds justifying the verdicts. Indeed, under domestic law, such observations should form one of the essential components of written judgments (see section 364(7) of the Criminal Procedure Act, cited in paragraph 24 above).

44. As to the question whether Judge A.K.'s retirement, which was allegedly the reason for her failure to provide written grounds, gave rise to exceptional circumstances which justified a departure from the standard domestic procedure (see paragraph 35 above), the Court observes that the date of her retirement must have been known to Judge A.K. in advance. It should therefore in principle have been possible to take measures either for her to finish the applicants' cases alone or to involve another judge at an early stage in the proceedings. Moreover, it notes that the case was not a particularly complex one and that the applicants gave notice of their intention to appeal as soon as the verdict was pronounced (see paragraph 12 above). That means that Judge A.K. was immediately aware that she would have to provide written grounds. The Court therefore cannot agree with the Government that there were good reasons to depart from the procedure to which the accused were entitled under domestic law. Furthermore, it is particularly striking that despite a statutory time-limit of thirty days, the written grounds were not provided for about three years after the pronouncement of the verdicts, during which time the case files were lost and had to be reconstituted (see paragraphs 13 and 23 above). Those factors raise further concerns about the way the applicants' cases were handled by the domestic courts.

45. The Court appreciates that in some cases there might be administrative or procedural factors that render a judge's continued participation in the case impossible (see *Cutean*, cited above, § 61, and *Mellors v. the United Kingdom* (dec.), no. 57836/00, 30 January 2003). However, it notes, first, that it follows from the considerations in the above paragraph that no such factors arose in the present case. Secondly, even if they had arisen, the only way to compensate for Judge A.K.'s inability to produce reasons justifying the applicants' conviction would have been to order a retrial, by, for instance, the second-instance court remitting the cases to the first-instance court for a new hearing (see paragraph 26 above). The reason for that is because when Judge A.K. retired the verdicts had already been pronounced and the applicants' statements and witness testimony constituted relevant evidence for them (see paragraphs 40 to 43 above).

46. Lastly, the Court is aware that there is a possibility that a higher or the highest court might, in some circumstances, make reparation for defects in first-instance proceedings (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86). However, it notes that in the present case the courts at higher levels of jurisdiction upheld the first-instance court's judgment without directly hearing any of the evidence (see paragraphs 17, 19, 21, 27 and 42 above, and, *mutatis mutandis*, *Beraru v. Romania*, no. 40107/04,

§ 71, 18 March 2014). It therefore cannot be said that the deficiency at issue in the present case was remedied by the appellate courts.

47. In conclusion, the Court considers that the applicants' right to a fair trial was breached because of the failure of the judge who conducted their trial to provide written grounds for her verdict and because of the absence of any appropriate measures compensating for that deficiency.

48. There has accordingly been a violation of Article 6 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicants each claimed EUR 10,000 in respect of non-pecuniary damage.

51. The Government disputed the claim as unsubstantiated and excessive.

52. The Court considers that the applicants must have suffered distress and anxiety on account of the violation which has been found. Ruling on an equitable basis, it awards each applicant the sum of EUR 5,000 in respect of non-pecuniary damage.

#### B. Costs and expenses

53. The first applicant claimed approximately EUR 2,500 and the second applicant approximately EUR 2,000 for the costs and expenses incurred before the domestic courts. They also each claimed EUR 3,020 for costs and expenses incurred before the Court. They based their claims on the official tariff for lawyers.

54. The Government contested their claim and argued that it was excessive. As regards the proceedings before the domestic courts, they argued that there was no causal link between the costs incurred and the violation alleged in the present case. As regards the claim concerning the proceedings before the Court, the Government argued that it had not been based properly on the official tariff for lawyers because the tariff provided that a maximum EUR 1,500 could be claimed for the whole of the proceedings.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Moreover, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many examples, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009).

56. With regard to the costs incurred in the domestic proceedings, the Court observes that before applying to the Convention institutions, the applicants exhausted the domestic remedies available to them under domestic law. The Court therefore accepts that the applicants incurred expenses in seeking redress for violations of the Convention through the domestic legal system (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 224, ECHR 2012) and finds that the expenses they had in relation to their appeals, appeals on point of law and constitutional appeals should be reimbursed. However it does not find the claim for reimbursement of costs relating to the first-instance proceedings substantiated.

57. As regards the proceedings before the Court, it should be noted that the applicants were represented by the same lawyer who lodged similar applications in the cases and one set of observations on behalf of both of the applicants.

58. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 1,000 for costs and expenses in the domestic proceedings and EUR 1,500 for the proceedings before the Court. Therefore each applicant should be awarded a total of EUR 2,500 with respect to costs and expenses.

### **C. Default interest**

59. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**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 of the Convention;



4. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros) each, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariálana Tsirli  
Registrar

András Sajó  
President