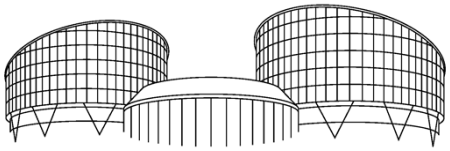

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ŠEKERIJA v. CROATIA

(Application no. 3021/14)

JUDGMENT

6 § 1 (criminal) • Fair hearing during trial for drug-related offences • Equality of arms and adversarial trial • Taking and credibility of evidence by witnesses not affecting overall fairness • References by domestic court to information in the case file, but not examined during the trial, not undermining overall fairness • Impartial tribunal • Trial court judgment's expression of its opinion in open and direct manner not implying personal involvement and therefore subjective partiality in the case • Any potential shortcomings remedied by reduction of sentence by Supreme Court • Adequate reasons given for failure to obtain attendance of witnesses on applicant's behalf

STRASBOURG

5 November 2020

FINAL

05/02/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Šekerija v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Linos-Alexandre Sicilianos,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to:

the application against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Dubravko Šekerija ("the applicant"), on 27 December 2013;

the decision to give notice to the Croatian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 13 October 2020,

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

INTRODUCTION

1. The case concerns criminal proceedings against the applicant on drug-related charges in which he was found guilty and sentenced to six years' imprisonment. The applicant complains, under Article 6 §§ 1 and 3 (d) of the Convention, that the criminal proceedings taken as a whole violated his right to a fair trial.

THE FACTS

2. The applicant was born in 1975 and lives in Dubrovnik. He was represented by Mr M. Umićević, a lawyer practising in Zagreb, and after his death by Ms Lj. Planinić, a lawyer also practising in Zagreb.

3. The Croatian Government ("the Government") were represented by their Agent, Ms S. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background to the case

5. On 21 October 2010 the police officers of the Criminal Police Department of the Dubrovnik-Neretva County Police (*Odjel kriminalističke*

policije Policijske uprave dubrovačko-neretvanske) (hereinafter "the police") arrested one Goran Kovačević and lodged a criminal complaint against him on suspicion of drug abuse (see *Goran Kovačević v. Croatia*, no. 34804/14, §§ 6 and 13, 12 April 2018).

6. The following day Goran Kovačević was questioned by the investigating judge of the Dubrovnik County Court (*istražni sudac Županijskog suda u Dubrovniku* – hereinafter "the investigating judge"). According to the report on his questioning, he was twice advised by the investigating judge of his right to remain silent and to hire a lawyer of his own choosing, who could be present during the questioning. He replied that he understood the advice and the grounds for his being under suspicion and maintained that he did not require a lawyer for that day's questioning and that he would give a statement and answer questions. He then explained that in August 2010 he had acted as an intermediary in the selling of amphetamines to R.Č. and D.P. and that between 2008 and 2010 he had on several occasions bought cocaine from the applicant for the price of 500 Croatian kunas (HRK) per gram. Lastly, he stated that he had been arrested the day before at 5 p.m. and that apart from the use of force during his arrest he did not have any objections regarding the police's conduct during his stay in the police station. He signed the report on his questioning without making any objections as to its contents. He was then released.

B. The applicant's arrest and pre-trial investigation

7. On 27 October 2010 the police arrested the applicant on suspicion of drug abuse.

8. On the same day, on the basis of a warrant issued by the Dubrovnik County Court (*Županijski sud u Dubrovniku*), the police searched the applicant's house and seized items such as a paper containing a list of different kinds of drugs and the duration of their presence in the human body, documents concerning various property-ownership transfers, the record of a statement one L.P. had given to the investigating judge on 7 October 2010, a record of a statement one M.V. had given to the police on 20 May 2010, documents concerning a police inquiry conducted in respect of the applicant in 2008, a device used to detect hidden cameras, twenty-nine envelopes with various dates and amounts of money written on them and a grey hydraulic press (*hidraulična dizalica*).

9. On the same day the police prepared a special report for the Dubrovnik County State Attorney's Office (*Županijsko državno odvjetništvo u Dubrovniku*) which stated that the results of the police inquiry indicated reasonable grounds for suspicion that the applicant had sold drugs to D.N., I.G., Goran Kovačević and M.V. in the period between 2003 and 2010.

10. On 28 October 2010 the applicant was questioned by the investigating judge in the presence of his chosen lawyer, D.H. He denied all allegations against him and submitted that he was a victim of a police conspiracy and that some of the persons to whom he had allegedly sold drugs had previously made death threats against him.

11. On 29 October 2010 the investigating judge opened an investigation in respect of the applicant and Goran Kovačević on suspicion of their having engaged in drug abuse.

12. The applicant appealed against that decision, submitting that there was no evidence that he had sold cocaine to D.N., I.G., Goran Kovačević and M.V. Although it was true that M.V. had told the police that he had bought cocaine from him, M.V. had retracted that statement before the Dubrovnik County Court, explaining that he had been forced by the police to say something along those lines.

13. On 2 November 2010 the Dubrovnik County Court dismissed the applicant's appeal as unfounded.

14. On 15 November 2010 the Dubrovnik County State Attorney's Office asked the investigating judge to extend the scope of the investigation against the applicant, explaining that from the police report it followed that he had also been selling drugs to Z.M. On 26 November 2010 the investigating judge extended the scope of investigation against the applicant on suspicion that between 2006 and 2010 he had also been selling drugs to Z.M.

15. On 23 November 2010 the investigating judge questioned I.G. as a witness and on 26 November 2010 D.N. as a witness. The applicant's lawyer was present during that questioning and was given an opportunity to question them. Both witnesses submitted that they had often bought drugs from the applicant.

16. In particular, I.G. submitted that he had been buying cocaine from the applicant between 2003 and 2005. He had been buying some 25-30 grams per month for the price of HRK 500 per gram. He would usually pick up the drugs from the applicant somewhere in the city or at the applicant's home, where the applicant had shown him pure cocaine and different powders he had mixed with it in order to create a bigger quantity, as well as the devices he had used for mixing and pressing, such as a grey press that he had kept beneath the stairs outside the house. He described the house in question and stated that the applicant lived on the first floor and his parents on the ground floor. He submitted that sometimes he would pick up the drugs from V.V. (who had been the best man at his wedding) who had acted as an intermediary for the applicant. He said that he had known D.N. very well and that he had been present when V.V. had given him 10 or sometimes 30 grams of cocaine. V.V. had told him that D.N. had not actually been paying for the cocaine. Instead, D.N. had promised to give the applicant his flat in Zagreb. I.G. furthermore submitted that in 2006 he had

stopped communicating with the applicant and V.V. and had stopped using cocaine. He had ended his relations with the applicant because he had learned that the applicant had reported him to the police for possessing 20 grams of heroin. He had been angry with the applicant for betraying him, so several days after the police had found heroin in his flat he had slapped the applicant and jumped on his car and damaged it. He lastly submitted that in 1988 he had undergone a five-day psychiatric treatment. When asked by the applicant's lawyer how many times he had told that story to the police, to the judge or to the State Attorney, I.G. replied that he did not wish to answer such a question and that nobody had instructed him to give his testimony.

17. D.N. submitted that he had been buying cocaine from the applicant between 2003 and 2005. Between these years he had purchased around 15-20 grams of cocaine per month from the applicant for the price of HRK 500 per gram. Sometimes he would pick up the drugs from the applicant personally and sometimes from two other persons, one of whom was V.V. He would give the money to the person from whom he would pick up the drugs. He submitted that he had sold his flat in Zagreb to the applicant's sister, and his land in Hvar to the applicant. He had used the purchase payment for his personal needs and for buying cocaine. Owing to his working too much and taking too much cocaine his health had at some point deteriorated and he had been deprived of his legal capacity for a period of two years. He lastly submitted that nobody had instructed him to, or blackmailed him into, giving his testimony.

18. On 2 December 2010 the investigating judge decided to join the investigation against the applicant and Goran Kovačević with the investigation being conducted against V.V.

19. On 8 December 2010 the investigating judge questioned as witnesses D.P., R.Č., Z.M., S.M. and I.K. in the presence of the applicant's lawyer. They all denied having bought drugs from the applicant, V.V. and Goran Kovačević.

In particular, D.P. and R.Č. stated that they had never bought amphetamines from Goran Kovačević.

Z.M. denied having bought drugs from the applicant and V.V.

S.M. and I.K. denied having bought drugs from V.V.

20. On 15 December 2010 the Dubrovnik County State Attorney's Office lodged a request with the investigating judge for the investigation against the applicant and V.V. to be extended, explaining that from the police report it followed that they had also been selling drugs to N.R. On 21 December 2010 the investigating judge extended the investigation. On 29 December 2010 N.R. was questioned by the investigating judge in the presence of the applicant's lawyer. He denied having bought drugs from the applicant and V.V.

21. On 29 December 2010 the investigating judge excluded from the case file police records on the questioning of different persons, since their use was not allowed in criminal proceedings. In his decision he explicitly stated the pages of the case file which were being excluded. He ordered that upon the decision on excluding the records from the case file becoming final, the excluded documents should be sealed in a special envelope and guarded by him and that they could not be viewed or used in the criminal proceedings. The excluded records cannot be found in the case file.

C. Indictment

22. On 5 January 2011 the Dubrovnik County State Attorney's Office indicted the applicant, Goran Kovačević, and V.V for drug abuse. In particular, the applicant was accused of purchasing and then selling cocaine to D.N. between 2003 and 2005, to I.G. between 2003 and 2005, and to Goran Kovačević between 2008 and 2010. V.V. was accused of selling cocaine to D.N. and I.G. between 2003 and 2005, and Goran Kovačević was accused of acting as an intermediary in selling amphetamines to R.Č. and D.P. in 2010.

23. The Dubrovnik County State Attorney's Office decided not to pursue prosecution against the applicant and V.V. as regards selling drugs to Z.M. and N.R., explaining that statements that Z.M. and N.R. had given during the investigation had not confirmed the reasonable suspicion that they had bought cocaine from the applicant and V.V.

24. On 9 January 2011 the applicant lodged an objection against the indictment. He contended that D.N., who had testified against him during the pre-trial proceedings, was mentally ill and had been divested of his legal capacity from July 2001 until November 2003, and that unless a psychiatric expert report to the contrary could be obtained, his testimony should not be trusted. He submitted that D.N.'s legal capacity had been restored because it had been established that he had stopped taking drugs, whereas in the present proceedings D.N. had claimed to have purchased cocaine from the applicant in that period. He furthermore submitted that I.G. had falsely accused him of selling drugs because he had wanted revenge for the fact that (according to I.G.) the applicant had reported him to the police for heroin possession. In 2007 I.G. had been making death threats against him and had been inciting other persons to make false accusations against him, of which the applicant had notified the Dubrovnik Municipal State Attorney's Office.

The applicant submitted a copy of a psychiatric report obtained in May 2010 by the Dubrovnik Municipal Court (*Općinski sud u Dubrovniku*) in respect of another criminal case. According to that report I.G. had suffered from personality and bipolar disorders but had been capable of understanding the nature and purpose of the criminal proceedings and the

consequences of procedural actions and had been able to participate in that trial. The report noted that I.G. had undergone psychotic phases in 1989 and 1998, but that in 2007 he had voluntarily applied to a clinic for treatment, which meant that he had not been in a psychotic phase. The report furthermore noted that for a longer period of time he had been stable, without any signs of psychosis, and that at one point in April 2010 he had displayed aggressive behaviour, which had passed the following day.

25. On 11 March 2011 the Dubrovnik County Court, sitting as a three-judge bench, dismissed the applicant's objection against the indictment as unfounded.

D. Trial hearings

26. The hearing of 3 May 2011 was adjourned in order for V.V.'s ability to follow the trial to be determined.

27. The hearing of 7 June 2011, which D.N., I.G., D.P. and R.Č. attended, was adjourned owing to the illness of the presiding judge, Z.Č. In the record of the hearing it was noted that G.Đ., a police officer of the Dubrovnik-Neretva County Police Department, had been present in the court room as a member of the public.

28. At a hearing held on 20 June 2011, the Dubrovnik County Court ("the trial court") established the identity of the defendants and the charges brought against them. The trial court then ordered that police records on the questioning of D.N. on 26 October 2010 and of I.K. on 17 August 2010, as well as a police report of 6 June 2008, be excluded from the case file.

Those records, however, can still be found in the case file.

According to the police record on the questioning of D.N. on 26 October 2010 as a suspect, D.N., in the presence of his lawyer, submitted about matters of which he subsequently extensively testified before the investigating judge and the trial court and regarding which he was questioned by the prosecution and the defence (see paragraphs 15 and 17 above and 30 below).

According to the police record on the questioning of I.K. on 17 August 2010 as a suspect, I.K., in the presence of his lawyer, submitted about matters which did not concern the applicant.

The police report of 6 June 2008 concerned an event involving V.V., unrelated to the charges against the applicant.

29. The remaining evidence was read aloud. The trial court then heard as witnesses D.N., R.Č. and D.P.

30. D.N. gave his statement and afterwards answered questions from the presiding judge, the prosecution and the defence (including the applicant, who put questions to D.N. in person). He submitted that he had been buying drugs from the applicant between 2002 and 2006, that he had sold a flat in Zagreb and an attic in Hvar to the husband of the applicant's sister, and that

he had sold another property in Hvar. In respect of the sale of the latter property he had negotiated with the applicant and another person named K. D.N. said that part of the purchase price had been "stated in cocaine". He submitted that sometimes the cocaine had been delivered to him by V.V.

He furthermore submitted that the applicant's wife had approached him on two separate occasions and had offered him money not to testify against the applicant. She had suggested that he apply to be admitted to a psychiatric clinic and thus avoid having to attend the hearing.

When asked by the prosecutor, D.N. submitted that he had sold his real estate partly for cash, which he had received from the applicant, and partly to cover his cocaine debt. He explained that after spending his earnings he had discussed with the applicant the possibility of selling his property to cover his cocaine debt.

When asked by the applicant's lawyer he submitted that he had been hospitalised owing to psychosis around 1997 and again in 2000, and that in 2006 he had gone to stay with a friend in Austria in order to get clean from drugs.

When asked by the applicant's lawyer who had accompanied him to the court that day, D.N. submitted that he had arrived with two police officers. He explained that he had been given police protection after the applicant's wife had approached him with blandishments in return for not testifying against the applicant. He had not been opposed to receiving such protection because several other persons had been "provoking" him as well. In response to further questions posed by the applicant's lawyer, D.N. described the occasions on which the applicant's wife had approached him. He submitted that he did not remember when exactly he had been deprived of his legal capacity but said that it might have been between 2000 and 2002, during which period he had probably not been taking drugs.

He furthermore replied that he knew R.Č. but had never talked to him regarding the case against the applicant, and that R.Č. had stopped communicating with him after he had given his testimony to the investigating judge. He lastly replied that he had not spoken with police officer G.Đ. about the case.

He then answered questions from the applicant in person (mostly about certain property transfers) and from V.V.'s lawyer.

In reply to a question from the applicant's lawyer D.N. stated that he had not discussed with his family or anyone else the possibility of retrieving the property that he had sold off, adding that his parents were proud that he had testified in the present criminal proceedings by telling the truth.

Lastly, in response to a question from the presiding judge, D.N. submitted that it was true that he would pay for the cocaine upon being served with it, as he had told the investigating judge, but that sometimes it would happen that he would not have any money with him, so he had slowly accumulated a debt.

31. R.Č. stated that he had not bought amphetamines from Goran Kovačević. He furthermore submitted that some two months previously D.N. had mentioned to him, although he had not understood him very well, that he was having some problems with the police, who had been threatening him and had promised to return him his real estates.

D.P. submitted that he had not bought amphetamines from Goran Kovačević.

32. At a hearing held on 21 June 2011 the trial court heard I.G. According to the record of the hearing, after I.G. gave his personal information, he asked the presiding judge to read out to him the statement that he had given to the investigating judge on 23 November 2010. After that statement was read out, I.G. confirmed it and added that the applicant had invited him to his home a couple of times to try the cocaine he had been "cooking", but that he had never gone to try it. He then answered questions from the prosecution and the defence.

In particular, he submitted that he had seen a grey hydraulic press below the stairs outside the applicant's house, which the applicant had told him was used for pressing cocaine. The press had had an iron cube on it. The applicant's lawyer asked that the press in question, which had been seized on 27 October 2010 during the search of the house of the applicant and his parents' house, be shown to I.G. Since the press was not in the court building, the hearing was rescheduled for 1 July 2011.

33. On 27 June 2011 the applicant lodged a submission complaining about the manner in which the hearing of 21 June 2011 had been conducted, and in particular about the way in which I.G. had been heard. He submitted that the trial court had – on its own initiative – offered to read out the statement that I.G. had given to the investigating judge, without firstly asking that witness to give his oral evidence at the hearing. He also submitted that I.G. had initially refused to answer the questions of the defence; and that the trial court had refused to include that incident in the record of the hearing, saying: "This is my written record of the hearing and I am going to put in it what I like."

34. At a hearing held on 1 July 2011, the trial court continued to hear I.G. I.G. described the grey hydraulic press that he had seen below the stairs of the applicant's house, after which the presiding judge showed him the press, which had been brought to the court. The applicant's lawyer asked him where the iron cube that he had mentioned was, and I.G. replied that the cube was no longer there but that it was a separate component (that is to say not an integral part of the press). I.G. added that the applicant had not explained to him how the press worked; he had only told him that he used it for pressing drugs.

I.G. then answered questions put by the trial court, the prosecution and defence (including by the applicant in person). He declined to answer several questions asked by the applicant's lawyer, namely: to disclose the

name of the person who had told him that the applicant had planted drugs in his apartment and the motive for giving testimony in the trial; and to disclose whether he was undergoing treatment for any mental illness. I.G. stated that he had been taking medication for his heart and for high blood pressure.

The presiding judge then noted that I.G. had submitted at the beginning of his witness testimony of 21 June 2011 that fifteen days earlier a certain I.Š. had hit him on the head with a bottle and had asked him something like: "What did you do to Šekerija?"

35. After the resumption of the trial on 1 July 2011 the applicant's lawyer, D.H., proposed to the trial court that five persons be heard as witnesses: (1) the applicant's wife, on account of her allegedly having approached D.N., (2) a woman named I.V., who could testify about the contacts between the applicant's wife and D.N., (3) M.V. and L.P., who could confirm R.Č.'s statement that D.N. had been incited to give false testimony against the applicant, and L.P. on account of her having been prohibited by the police from publishing an article about the applicant having been acquitted in certain other minor defence proceedings, and (4) the applicant's mother, P.Š., in order to establish which objects seized by the police in the search of the house had belonged to the applicant and which had belonged to her and the applicant's father.

He furthermore proposed that the court examine the psychiatric expert report in respect of I.G. and the applicant's submissions evidencing that I.G. had been threatening the applicant, which the applicant had submitted with his objection against the indictment (see paragraph 24 above). He lastly proposed that the court obtain documentation concerning D.N.'s deprivation of his legal capacity and documentation from institutions in which D.N. had been treated for his drug addiction, in order to verify the period in which he had been taking drugs.

36. Goran Kovačević's lawyer proposed that the trial court examine the medical records of Goran Kovačević's father. The trial court examined this medical documentation but declined to adduce and examine the other evidence proposed by the lawyer, considering it irrelevant to the proceedings at that point.

37. At the beginning of the hearing held on 4 July 2011, the presiding judge noted that just before the hearing, E.P., a member of the trial bench, had reported that he had been approached in the street by a person who had introduced himself as the applicant's father, and who had told him in a short conversation that he should not vote for his son to be found guilty.

38. The trial court then heard the applicant. The applicant stated that at the outset of his statement to the court he had wanted to deny having had any kind of contact with drugs in his entire life and that the objects that had been seized by the police from his house had belonged to his parents. He furthermore stated that in July 2010 he had been stopped by the police and

tested for drugs, and that after that test had come out negative he had sent an insulting and humiliating letter to the police and had asked for damages. He furthermore stated that he had been arrested in 2009 together with D.N. after D.N. had returned from Colombia, and that D.N. was a product of Croatian and German mental institutions and that he had been convicted for drug abuse. He furthermore submitted that it was true that he had been an intermediary in the sale of property in Hvar between D.N. and I.K., that he had paid to D.N. the purchase price (which had been given to him by his sister), and that by so doing he had intended to earn 5,000 euros (EUR) tax-free. He submitted that in 2010 he had had an argument with D.N. because D.N. had wished to buy that land back from him, which had no longer been possible because he had sold the land on to his sister. The applicant's sister had also bought a flat in Zagreb from D.N.

The applicant furthermore submitted that he knew Goran Kovačević but had not sold drugs to him and that he had learned from his lawyer, D.H., that the police had ill-treated Goran Kovačević in the police station.

He submitted that several years previously I.G. had been renting a flat from his wife but because he had not been paying rent he and V.V. had ejected him; they had thrown his belongings over the balcony and V.V. had forced I.G. down the stairs by kicking him from behind. I.G. had jumped on his Audi and damaged it, which had all been covered up at this court, and I.G. had announced that he would give a false testimony against him, which had now come to pass. In fact, I.G. had given, as described by the applicant, "his sick testimonies" (*bolesna svjedočanstva*) against twenty other people. He personally had not known anything about heroin being planted in I.G.'s flat and he did not wish to comment court judgments against other persons.

The applicant lastly submitted that he had registered his residence at an address at which he had not been living in order to avoid traffic fines; the paper containing a list of drugs and the duration of their presence in the human body had been printed out by his wife after she had been stopped by the police and tested for drugs; the security cameras around the house had been installed by his parents to protect the house from thieves; and the envelopes inscribed with various dates and amounts of money that had been seized from his house had belonged to his father, who sold daily tourist excursion tickets.

39. The trial court then heard the applicant's co-accused, Goran Kovačević. After Goran Kovačević gave his statement he was questioned by the presiding judge, the prosecution, his lawyer and the applicant's lawyer. Goran Kovačević confirmed the part of his statement that he had given to the investigating judge on 22 October 2010 concerning the criminal accusation against him – namely that he had acted as an intermediary in the selling of amphetamines to R.Č. and D.P. He retracted the part of his statement concerning his buying cocaine from the applicant. He submitted that after he had been brought to the police station he had been physically

and psychologically ill-treated and had been coerced into giving such a statement to the investigating judge. He explained that once he had been brought to the police station he had immediately confessed being an intermediary in the selling of amphetamines. However, when the police had started questioning him about the applicant and the cocaine, he had asked for a lawyer. Police officer L.D. had told him that D.H., the lawyer, had arrived at the entrance of the police station but had not been allowed to come in. Goran Kovačević then apologised to the applicant, stating that it was because of the false statement that he had given to the investigating judge that the applicant had ended up in pre-trial detention.

E. Trial court's judgment

40. On 6 July 2011 the Dubrovnik County Court, sitting as a bench composed of judge Z.Č., the presiding judge, judge M.V., and lay judges M.B., M.K. and E.P., found the applicant guilty as charged and sentenced him to eight years' imprisonment.

In particular, it found that between 2003 and 2010 the applicant had acquired larger quantities of cocaine which he had then sold for the price of HRK 500 per gram to:

D.N., between 2003 and 2005, in total at least 200 grams;

I.G., between 2003 and 2005, in total at least 500 grams; and

Goran Kovačević, between 2008 and 2010, in total several grams.

It also found V.V. and Goran Kovačević guilty and sentenced them both to two years' imprisonment.

In finding the applicant guilty the trial court did not consider credible the applicant's defence, or the allegation that his co-accused, Goran Kovačević, who had confessed to the investigating judge that he had bought cocaine from the applicant, had given his statement under police duress. The trial court furthermore held that the respective testimony of D.N. and I.G. that they had been buying cocaine from the applicant was trustworthy and consistent. The trial court also assessed the credibility of other witnesses and the material evidence that had been obtained during the proceedings and referred to the evidence proposed by the defence, which had been rejected during the trial.

The relevant part of the first-instance judgment reads:

> "...
>
> That [the applicant] perpetrated the criminal offence of the unlawful purchase and sale of ... cocaine to D.N., I.G. and Goran Kovačević between 2003 and 2010 – in total at least 700 grams, at a price of HRK 500 per gram – has been proved by the very honest, objective, real and detailed witness testimony of witnesses who purchased the cocaine from [the applicant], D.N., I.G. and Goran Kovačević.

Therefore, this court does not believe the first sentence during [the applicant's] questioning ... that he had never had any contact with drugs and especially not with selling drugs.

...

The witness D.N., tired by long-term drug consumption, significantly weak, and without any aspirations to retrieve his lost land, the flat in Zagreb that he sold and his property in Hvar, is – without any pressure or evil motive – testifying before this court, which has no reason not to believe him, that for years, initially he said between 2003 and 2005 and at the main hearing he said for four years, he has been purchasing cocaine from [the applicant]. D.N. describes in detail how he met [the applicant] (through his wife ...), how [the applicant] offered him cocaine and how the "business" relationship was created and continued. D.N. purchased cocaine from [the applicant], which ... was given to him either by [the applicant] in person or ... by two unknown young men, one of whom was ...V.V. ...

The witness D.M. submits that he had money ... invested in real estate, which [the applicant] knew full well, ... offering his services as an intermediary in those transfers of property – that is to say he was somehow always present when D.N. sold his flat in Zagreb, a floor of his house, and his land in Hvar, and he always acted as some kind of middleman for his sister, who bought all that real estate from D.N. [The applicant] has not even hidden the fact that he was somehow involved with all these sales ... he only denies the connection between the drugs and D.N.'s real estate.

Why would [the applicant] always be somewhere around if D.N. was not buying drugs from him? We know why because – as honestly submitted by D.N. – he was purchasing cocaine from [the applicant] in not-so-small quantities for several years.

The witness I.G. gave very similar testimony to that of the witness D.N. He also started purchasing cocaine ... from [the applicant] in 2003 ...

This court believes that [these] witnesses were telling the truth because their respective testimony is very similar in the relevant parts. [The applicant's] *modus operandi* was the same ...

That the witness I.G. was telling the truth was confirmed by his credible description of the rooms and space in and around [the applicant's] house, where he saw the hydraulic press with which [the applicant] pressed the mixture, which he mixed ... with different powders ... in order to increase the volume and weight of the cocaine that he was selling. That the description of the living area was accurate was proved by the police records regarding the on-site inspection ... How would I.G. have known about the press and be able to describe it so well if he had not seen it and had [the applicant] not told him what he used it for.

The [applicant] is worried by the motive for I.G.'s statement. Allegedly, I.G. "promised" him long ago that he would give "false" testimony, through [the applicant's] friend, T.Z. (actually they were all friends), whom this presiding judge sentenced to a prison term ... in criminal case no..., – a case that is pending before the appellate court ...

... the only motive of [the applicant] is money and a pleasant life without work. [The applicant] does not work, has not earned money for years, is forty years old, has a wife and a son, and does not even know the salary of his wife (who recently found herself only a seasonal job, because she certainly [contributes] only a side income to his family budget – otherwise he would know every cent of her salary). During this entire time ... .he drove high-class cars ...

That [the applicant] sold cocaine ... to Goran Kovačević, was confirmed very honestly by Goran Kovačević during his questioning by the investigating judge ... At the main hearing Goran Kovačević submitted that he had been coerced into giving such a statement by the police, and denied any connection with [the applicant]. The court did not believe in that change of statement ... because Goran Kovačević himself stated at the hearing that he had given his statement to the investigating judge uninterruptedly, without the presence of the police, and that the investigating judge had warned him that ... he had the right to remain silent. Moreover, Goran Kovačević submitted that he had been beaten by the police – but [only] during his arrest, and not in the police building during questioning ... Therefore, the very horrible act of apologising to [the applicant] at the main hearing ... points to the base intentions and to the weak character of Goran Kovačević, who by making such a statement at the hearing (that he had had nothing to do with [the applicant]), wished to help [the applicant] regarding the charges against him.

The case file shows that many more people were invited before the police – witnesses who said one thing there and another thing before the investigating judge. So if they could do that, so could Goran Kovačević. Actually he could not have, because he ... told the truth – that two or three times he had purchased a gram of cocaine ...

In the light of all of the above, the court established that [the applicant] committed the criminal offence ... of selling cocaine for several years in large quantities to D.N., I.G. and Goran Kovačević.

...

As aggravating circumstances, it took into account the fact that the criminal offence ... was committed over a long period of time ... of almost seven years [and involved] a large quantity of drugs – drugs categorised as so-called hard drugs ...

...

As further aggravating circumstances the court takes into account the high degree of consistent impudence openly displayed towards the trial court [by the applicant], [who has said] that this court is protecting a 'sick convict' [I.G.], ... that the court has used I.G. as a witness some twenty times ..., that he personally kicked I.G.'s belongings over the balcony, ... that he wished to avoid paying taxes on his property purchase and earn EUR 5,000 on the "black market", that he registered another address [as his residence] in order to avoid paying traffic tickets, and that he sent an insulting and humiliating letter to the police after the police had tested him for drugs ... All these circumstances indicate a remarkable persistence, arrogance and unscrupulousness in breaking the rules of normal civilised and legally regulated behaviour in society ...

...

The court dismissed the evidence submitted by [the applicant], ... deeming it not necessary for establishing the relevant facts, because those are truly sufficiently established and confirmed, and the adducing of any further evidence would be unnecessary for the rendering of a judgment based on law and justice.

For example, [the applicant] proposed that the court hear as a witness L.P. (who was being tried before this court [in separate proceedings] in respect of a criminal offence ...) in order to prove that the police did not allow her, a journalist working for local newspapers ..., to write about the minor-offence proceedings against [the applicant], which in the view of this court and the trial bench was completely unnecessary and had nothing to do with this case. Likewise the proposals to verify the health condition

> of witnesses by examining documents from other court proceedings, ... because, as already stated, neither the presiding judge nor the trial bench members ever once suspected that the witnesses were ill or that for any other reason they should be subjected to expert assessments, neither as regards the period of perpetrating the criminal offence ..."

F. Applicant's appeal against the trial court's judgment

41. The applicant appealed against the trial court's judgment to the Supreme Court (*Vrhovni sud Republike Hrvatske*).

42. He firstly pointed to the part of the trial court's judgment that read:

> "The case file shows that many more people were invited before the police – witnesses who said one thing there and another thing before the investigating judge. So if they could do that, so could Goran Kovačević."

43. According to the applicant, the above wording indicated that the trial court had read the records of the police interviews with potential witnesses, which had not constituted evidence within the meaning of the Code of Criminal Procedure and as such should have been excluded from the case file. Moreover, it also indicated that the trial court had read the records of the statements that those persons had given to the investigating judge. Those records had never been read out at the trial, nor had those persons been heard as witnesses during the trial.

44. The applicant furthermore complained that the trial-court judgment had referred to T.Z. having previously been convicted of a crime and to criminal proceedings having been conducted against L.P., neither of which had ever been discussed in the proceedings against him or formed part of the case file.

45. He furthermore complained of the manner in which evidence had been taken from I.G. In particular, he submitted that – contrary to the relevant procedural rules – the trial court had read out the statement that I.G. had given to the investigating judge, before inviting that witness to give his testimony at the hearing.

46. The applicant furthermore complained that the statements given by D.N. to the investigating judge and to the trial court had been mutually contradictory, in that before the investigating judge D.N. had claimed that he had been buying cocaine from the applicant between 2003 and 2005 and had received the entire purchase price for the real estate that he had sold, whereas at the trial he had submitted that he had been buying cocaine between 2002 and 2006 and had received the purchase price for the real estate partly in money and partly in the form of cocaine. The applicant complained about the trial court declining to obtain, without providing any reasons, the medical documentation from which could have been established the period during which D.N. had been taking drugs. He complained about police officer G.Đ. being present at the trial hearing during which D.N. had

given his statement, which according to him indicated that he had been pressured by the police.

47. The applicant furthermore complained about the trial court declining to hear his wife and I.V., L.P., M.V. and his mother as witnesses.

48. He furthermore contended that the judgment had been based on evidence given by his co-accused, Goran Kovačević, who had been brutally beaten by police officers and had been denied access to a lawyer.

49. He lastly complained that the trial court had been partial and that the judgment had been written in a subjective, emotionally charged manner. The latter had been particularly evident in the part of the judgment where the trial court had enumerated the aggravating circumstances when fixing his sentence. The applicant referred to expressions used in the wording of the trial court's judgment, which in his view suggested a very negative subjective attitude on the part of the trial court towards the applicant; for example, the applicant noted that the trial court had stated that it "does not believe the first sentence during [the applicant's] questioning ... that he had never had any contact with drugs and especially not with selling drugs." According to the applicant, that allegation had been inappropriate and proved that the trial court had judged the accused's style of defence, rather than assessing evidence proving his guilt.

G. Supreme Court's judgment

50. On 29 February 2012 the Supreme Court allowed the applicant's appeal in respect of the part concerning the sentence, reduced it to six years' imprisonment, and dismissed the remainder of the appeal.

51. The Supreme Court firstly held that when the trial court had used the expression "many people" in respect of police interviews, it had primarily been referring to the statements of witnesses who had been heard at the trial – notably, Goran Kovačević, D.P. and R.Č., and not other persons, as the applicant had suggested in his appeal.

52. The Supreme Court furthermore agreed with the applicant that the first-instance judgment should not have referred to criminal cases against T.Z. and L.P., but held that the references to those cases had not had any influence on the validity of the judgment and that the use of such evidence had not been unlawful under Article 9 of the Code of Criminal Procedure (see paragraph 59 below).

53. The Supreme Court also agreed that the beginning of the questioning of I.G. had not been in line with Article 327 of the Code of Criminal Procedure (see paragraph 59 below), but that because of how the questioning had continued it had not influenced the judgment within the meaning of Article 367(3) of that Code. In particular, after I.G.'s statement had been read out to the investigating judge, the parties – and in particular

the applicant's lawyer – had had the opportunity to thoroughly question that witness.

54. The Supreme Court furthermore held that there had been nothing to support the applicant's argument that D.N. and I.G. had falsely testified against him. The fact that D.N. had had police protection had to be viewed together with the fact that lay judge E.P. had confirmed that he also had been pressured in relation to the criminal proceedings against the applicant. D.N.'s police protection had not influenced the credibility of his testimony.

55. The Supreme Court held, however, that the trial court had given the applicant too a harsh sentence. It held that certain circumstances that the first-instance court had viewed as aggravating should not have been assessed that way, such as the fact that the witness had been pressured by third persons, the applicant's "attitude towards the court", and his personal views about the witnesses.

56. As to the change of Goran Kovačević's line of defence, the Supreme Court agreed with the trial court that this had probably been an attempt to help his co-accused, the applicant, in the trial, rather than constituting a credible reason for retracting the statement that he had given to the investigating judge that he had been buying cocaine from the applicant. The Supreme Court noted that in his appeal Goran Kovačević himself had stated that the police officers had not had any reason to exert pressure on him, given that he had immediately confessed to his crime. Having regard to the fact that Goran Kovačević's detailed statement that he had been buying cocaine from the applicant had considerably helped to establish that the applicant had perpetrated the criminal offence of which he had been charged, the Supreme Court reduced his sentence to one year's imprisonment.

H. Proceedings before the Constitutional Court

57. The applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), reiterating his previous arguments.

58. On 7 November 2013 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded. The decision was served on the applicant's lawyer on 18 November 2013.

RELEVANT LEGAL FRAMEWORK

59. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 62/2003, and 115/2006), as in force at the time, read as follows:

Article 9

"(1) The courts' decisions [in criminal proceedings] cannot be based on unlawfully obtained evidence (unlawful evidence).

(2) Unlawful evidence is evidence obtained by means of a breach of the fundamental rights of defence, the right to dignity, reputation, honour and respect for private and family life guaranteed under the Constitution, law and international law, evidence obtained in breach of the rules of criminal procedure (which are explicitly set out in this Code), and evidence that is obtained from such evidence."

Article 78

"(1) Where this Code provides that a judicial decision cannot be based on certain evidence, the investigating judge shall, at the request of the parties or *ex officio*, exclude such evidence from the file before the conclusion of the investigation ... The decision of the investigating judge is open to appellate review.

(2) After the decision [on the exclusion of evidence] becomes final, the excluded evidence ... shall be sealed in an envelope and the investigating judge shall keep it separate from other files, and it may not be consulted or used in the proceedings.

(3) After the investigation is completed ..., the investigating judge shall also proceed in accordance with the provisions of paragraphs 1 and 2 of this Article in respect of all information which, in accordance with Article 183(4) and Article 186(3) of this Code, is given to the State Attorney or to police officers by citizens or by suspects who have been questioned in a manner contrary to the provisions of Article 186(5) of this Code."

Article 186

"(1) If there are grounds for suspecting that a criminal offence subject to public prosecution has been committed, the police shall be bound to take necessary measures aimed at discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, and discovering and securing traces of the offence and objects of evidentiary value, as well as collecting all information that could be useful for conducting criminal proceedings. ...

(2) In order to fulfil the duties referred to in paragraph 1 of this Article, the police may seek information from citizens, carry out polygraph tests, voice analysis, and the necessary inspections of means of transportation, passengers and luggage, ... [and] implement measures necessary for the identification of persons and objects ... When facts and circumstances established in the course of carrying out [such duties] might be of interest to the criminal proceedings, an official record shall be made in respect of those facts and circumstances.

...

(4) When collecting information, the police cannot interview citizens in their capacity as accused persons, witnesses or expert witnesses....

(5) In the course of collecting information the police authorities shall inform the suspect, pursuant to Article 237(2) of this Code. At the request of the suspect the police authorities shall allow him to appoint a lawyer, and for that purpose they shall stop interviewing the suspect until the lawyer appears or at the latest three hours from the moment that the suspect requested appointment of a lawyer. ... If the circumstances show that the chosen lawyer will not be able to appear within this

period of time, the police authorities shall allow the suspect to appoint a lawyer from the list of lawyers on duty provided to police administrations by the Croatian Bar Association for the territory of the county [in question] ... If the suspect does not appoint a lawyer or if the requested lawyer fails to appear within the provided period of time, the police authorities may resume their interview with the suspect ... The State Attorney has the right to be present during the interview. The record of any statement made by the defendant to the police authorities in the presence of a lawyer may be used as evidence in the criminal proceedings.

..."

Article 301(3)

"If the presiding judge establishes that case file contains records or information referred to in Article 78 of this Code, he or she shall exclude such evidence from the file before the trial hearing is scheduled, and when the decision [on the exclusion of evidence] becomes final, the excluded evidence shall be handed over in an envelope to the investigating judge in order to keep it separate from other files."

Article 327

"If a witness or expert witness stated, during previous questioning, facts which he or she no longer recalls, or contradicts a previous statement that he or she has made, the previous statement shall be presented to him or her – that is to say he or she will be cautioned about these contradictory statements and asked why he or she is giving different testimony. If necessary, his or her previous statement (or part of that statement) shall be read out."

Article 367(3)

"A grave breach of criminal procedure also exists if the court, in the course of the preparation for the main hearing, or during the main hearing, or when rendering its judgement, fails to apply or incorrectly applies any of the provisions of this Code or violates a right of the defence at the main hearing, provided that [so doing] influences or could influence that judgement."

60. Relevant parts of Opinion No. 11 (2008) of the Consultative Council of European Judges (CJJE) on the quality of judicial decisions, dated 18 December 2008, reads as follows:

"37. The reasoning must reflect the judges' compliance with the principles enunciated by the European Court of Human Rights (namely the respect for the right of defence and the right to a fair trial). Where provisional decisions concern individual freedoms (e.g. arrest warrants) or may affect the rights of individuals or assets (e.g. the provisional custody of a child or the preventive attachment of real property or the seizure of bank accounts), an appropriate statement of the reasons is required.

38. The statement of the reasons must respond to the parties' submissions, i.e. to their different heads of claim and to their grounds of defence. This is an essential safeguard because it allows litigants to ensure that their submissions have been examined and therefore that the judge has taken them into account. The reasoning must be free of any insulting or unflattering remarks about the parties."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

61. The applicant complained that the criminal proceedings against him had been unfair. He alleged in particular that:

(i) the principles of equality of arms and adversarial trial had been breached as regards the manner in which the evidence had been taken;

(ii) the trial court had lacked impartiality; and

(iii) he had not been able to secure the attendance of witnesses on his behalf under the same conditions as witnesses against him.

62. He relied on Article 6 §§ 1 and 3 (d) of the Convention which, in so far as relevant, reads:

> "1. In the determination of...any criminal charge against him, everyone is entitled to a fair and public hearing...by an independent and impartial 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

63. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Articles 34 and 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

64. The applicant complained under Article 6 of the Convention that he had not had a fair trial. He relied on the following three aspects of the proceedings which, taken cumulatively, in his view had rendered the proceedings before the national courts unfair.

(i) Equality of arms and adversarial hearing

(1) The taking of evidence by witnesses

65. The applicant contended that the trial court had read out the statement that I.G. had given to the investigation judge, without firstly

asking that witness to give his oral evidence at the hearing in open court. That had been contrary to the relevant procedural rules. Furthermore, at the hearing in question that witness had refused to answer questions from the defence, and the presiding judge had refused a request by the applicant's lawyer for that to be noted in the record of the hearing, saying that "This is my written record of the hearing and I am going to put in it what I like."

66. The applicant submitted that he had been convicted solely on the basis of the contradictory witness testimony of I.G. and D.N., who were mentally-ill, hated him (I.G.) and had been manipulated by the police (D.N.), and on the basis of a statement that Goran Kovačević had given under police coercion, without there being any material evidence against him.

(2) Evidence that was not presented at the trial

67. The applicant contended that the trial court's statement that "[t]he case file shows that many more people were invited before the police – witnesses who said one thing there and another thing before the investigating judge" indicated that the trial court had read statements given by potential witnesses to the police of a type that, under the Code of Criminal Procedure, could not serve as evidence in criminal trials and should have been excluded from the case file. Moreover, the applicant had not had an opportunity to comment on these interviews since they had not been presented at the trial. The Supreme Court had unsuccessfully tried to justify this situation by ruling that the trial court must have had in mind the statements of those witnesses who had indeed been heard at the trial.

68. Furthermore, the trial court's judgment had cited judgments rendered in criminal proceedings against certain other persons which had not been presented as evidence during the trial.

(ii) Impartiality of the trial court

69. The applicant argued that the text of the trial court's judgment had indicated that the trial court had read the minutes of the police interviews with potential witnesses that did not constitute evidence, within the meaning of the Code of Criminal Procedure, and as such should have been excluded from the case file. By the trial court gaining knowledge of those documents its impartiality had been put in question.

70. The applicant furthermore argued that the expressions used in the trial court's judgment had suggested a very negative subjective attitude on the part of the trial court (and specifically, of the presiding judge) towards the applicant.

(iii) Attendance of witnesses on the applicant's behalf

71. The applicant contended that the trial court had refused to hear all witnesses proposed by the defence, without giving adequate reasons.

(b) The Government

(i) Equality of arms and adversarial hearing

(1) Taking evidence from witnesses

72. The Government submitted that according to the record of the hearing of 21 June 2011, the trial court had read out the statement given by I.G. to the investigating judge only after that witness had asked the presiding judge to do so in the light of the fact that six months had passed since he had given his statement to the investigating judge. After the statement had been read out, the trial court had questioned I.G. in a detailed and objective manner, after which the prosecution and the defence had had an opportunity to thoroughly question him. The Government agreed with the Supreme Court that, given the circumstances, the manner in which the questioning of I.G. had begun had not affected the fairness of the trial.

73. The Government contended that the applicant had been convicted on the basis of the witness testimony of I.G., D.N. and Goran Kovačević, who had all given similar descriptions of the *modus operandi* employed by the applicant in respect of their buying cocaine from him. Moreover, I.G. had testified that he had seen a hydraulic press below the stairs outside the applicant's house, which the applicant had told him served for pressing drugs; the hydraulic press that had been found during the search of the applicant's house had matched I.G.'s description of it.

74. As regards the applicant's complaint that D.N. had been accompanied to the trial hearing by a police officer who had participated in the pre-trial stage of the proceedings (implying that D.N. had been coached by the police before giving his testimony at the hearing) the Government submitted that D.N. had explained that he had been placed under police protection after the applicant's wife had approached him with offers to change his testimony, and that he had not objected to receiving police protection. While it was true that police officer G.Đ., who had participated in the pre-trial stage of the proceedings, had appeared at the hearing at which D.N. was also present, D.N. had not given his testimony at that hearing because it had been postponed. At the following hearing D.N. had been escorted by two other police officers who, by the knowledge of the Government, had had no part in the pre-trial stage.

75. The trial court had refused to obtain medical documentation and documentation from other proceedings concerning D.N.'s and I.G.' medical condition since it had not once suspected that those witnesses had had any mental issues which would put their testimony into doubt. The witnesses in

question had given matching and logical statements and there had therefore been no need to verify their mental state.

76. The Government noted that the trial court had not considered credible the sudden change in the testimony of the applicant's co-accused, Goran Kovačević, who had previously given a clear and unambiguous testimony to the investigating judge, corroborating his role in the unauthorised actions and incriminating the applicant.

(2) Evidence which was not presented at the trial

77. The Government submitted that the investigating judge had excluded the police notes and records before handing down the case file to the trial court. Immediately after opening the main hearing the trial court had excluded the remaining police records from the file. Hence, the trial court could not have access to them. All the witnesses had been questioned in the presence of the defence and both the applicant's lawyer and the applicant personally had had an opportunity to question them.

(ii) Impartiality of the trial court

78. The Government submitted that there had been nothing capable of casting doubt on the impartiality of the presiding judge, judge Z.Č. He had used specific writing style to explain the established facts in an expressive manner.

79. The Government saw nothing problematic with describing the applicant's motive for committing the criminal offence charged and convicted of. The hearing records showed that judge Z.Č. had documented all relevant information in in an objective manner throughout the whole trial and had elaborated on this information in the judgment. There was no uniform norm for writing judgments and not every judge needed to use the same style.

(iii) Attendance of witnesses on the applicant's behalf

80. The Government submitted that the trial court had refused to hear the applicant's wife as regards her contacts with D.N., the applicant's mother as regards which objects seized during house search had belong to her, and journalist L.P. as regards her allegedly being prevented from publishing an article about the applicant being acquitted in minor offence proceedings, finding those proposals irrelevant for deciding the case.

2. The Court's assessment

(a) Preliminary remarks

81. The Court reiterates that the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for

interpreting Article 6 § 1 restrictively (see *Perez v. France* [GC], no. 47287/99, § 64, ECHR 2004 I).

82. In cases under Article 6 of the Convention, the Court often examines individual aspects of a fair trial that the applicant complains of, and a breach of such a specific right may result in a breach of the right to a fair trial. Nevertheless, in many instances it takes into account the "proceedings as a whole". Thus the Court may find a breach of Article 6 § 1 of the Convention if the proceedings taken as a whole did not satisfy the requirements of a fair hearing even if each procedural defect, taken alone, would not have convinced the Court that the proceedings were "unfair" (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 89, Series A no. 146; *Mirilashvili v. Russia*, no. 6293/04, § 165, 11 December 2008; and *Miracle Europe Kft v. Hungary*, no. 57774/13, § 46, 12 January 2016).

83. The Court would also reiterate that Article 6 § 1 of the Convention does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. Normally, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, amongst many others, *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 83 (b), ECHR 2017 (extracts)).

(b) Equality of arms and adversarial trial

(i) General principles

84. The Court reiterates that equality of arms is an inherent feature of a fair trial. It requires that each party be given a reasonable opportunity to present his case under conditions that do not place him or her at a disadvantage *vis-à-vis* his or her opponent (see *Bulut v. Austria*, 22 February 1996, § 46, *Reports of Judgments and Decisions* 1996-II and *Faig Mammadov v. Azerbaijan*, no. 60802/09, § 19, 26 January 2017).

85. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However, whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment on them (see *Brandstetter v. Austria*, 28 August 1991, §§ 66-67, Series A no. 211; and *Zahirović v. Croatia*, no. 58590/11, § 42, 25 April 2013).

86. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140). It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, unlawfully obtained evidence – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002‑IX; and *Dragojević v. Croatia*, no. 68955/11, § 128, 15 January 2015).

87. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see, amongst many others, *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009).

88. The above test has been applied in cases concerning complaints that evidence obtained in breach of the defence rights has been used in the proceedings. This concerns, for instance, exertion of pressure on co-accused (see *Erkapić v. Croatia*, no. 51198/08, §§ 74-89, 25 April 2013 and *Dominka v. Slovakia* (dec.), no. 14360/12 of 3 April 2018) and unfair use of other incriminating witness and material evidence against an accused (see *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, §§ 211-239, 16 November 2017).

89. Particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use in criminal proceedings of statements obtained as a result of a violation of Article 3 – irrespective of the classification of the treatment as torture, inhuman or degrading treatment – renders the proceedings as a whole automatically unfair (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 254, 13 September 2016; and *Gäfgen v. Germany* [GC], no. 22978/05, § 173, ECHR 2010).

90. In this connection, it should be noted that the Court has held that the absence of an admissible Article 3 complaint does not, in principle, preclude it from taking into consideration the applicant's allegations that the police

statements had been obtained using methods of coercion or oppression and that their admission to the case file, relied upon by the trial court, therefore constituted a violation of the fair trial guarantee of Article 6 (see *Mehmet Duman v. Turkey*, no. 38740/09, § 42, 23 October 2018).

(ii) Application of those principles in the present case

91. In the present case, the evidence supporting the accusation against the applicant on which his conviction rests consisted of witness testimonies of I.G. and D.N.; the statement which the applicant's co-accused, Goran Kovačević, gave in the pre-trial investigation; and the grey hydraulic press found below the stairs outside the applicant's house. The applicant complains about the manner in which the above and other evidence was admitted, examined and assessed and the manner in which the domestic courts dealt with the defence's objections concerning that evidence. The Court will proceed with examining the applicant's objections regarding each piece of evidence.

(1) Taking of evidence by witnesses

– *I.G.'s questioning at the hearing of 21 June 2011*

92. The Court firstly notes that it is undisputed that the manner in which the questioning of I.G. began at the hearing of 21 June 2011 was not in line with Article 327 of the Code of Criminal Procedure (see paragraphs 53 and 59 above). In particular, the witness in question had his statement given to the investigating judge on 23 November 2010 read out before giving his testimony in open court (see paragraph 32 above).

93. The Court notes that the Supreme Court scrutinized the matter and concluded that, due to the manner in which the questioning of that witness had continued, the procedural irregularity in question had not influenced the judgment (see paragraph 53 above).

94. The Court notes in that regard that after I.G.'s statement given to the investigating judge was read out, that witness confirmed it and added further information as to his relationship with the applicant. He was then, in the course of two consecutive trial hearings, thoroughly questioned by the trial court, the prosecution and the defence, including the applicant personally (see paragraphs 32 and 34 above). Thus, the trial court, the prosecution, as well as the applicant and his lawyer, were in a position to observe I.G.'s demeanour under questioning, to form their own impression of his probity and credibility and to challenge the veracity of his statements.

95. The Court also notes that the applicant's lawyer was present during I.G.'s questioning before the investigating judge on 23 November 2010 and that he had the opportunity to question that witness already then (see paragraphs 15 and 16 above). Accordingly, the content of that questioning was known to the defence.

96. The Court furthermore notes the applicant's complaint that I.G. initially refused to answer questions of the defence, and that the trial court refused to note that in the record of the hearing (see paragraph 65 above). Even if this was so, it is evident that I.G. eventually answered numerous questions by the applicant's lawyer and the applicant personally (see paragraphs 32 and 34 above).

97. Accordingly, the Court is of the view that the manner in which the questioning of I.G. at the hearing of 21 June 2011 began was offset with the fact that I.G. was thoroughly questioned by the trial court, the prosecution and the defence, as well as with the fact that the defence was present during his questioning before the investigating judge. The defence was therefore afforded an effective opportunity of putting the incriminating statement of I.G. to the test. Furthermore, taking into account the whole content of I.G.'s questioning during the trial, the Court is of the view that the three questions of the applicant's lawyer to which I.G. did not answer did not undermine the position of the defence.

– *Credibility of I.G.'s testimony*

98. The Court shall next examine the applicant's complaint that I.G.'s testimony should not have been taken as credible as it was contradictory and given by a mentally ill person who hated the applicant (see paragraph 66 above).

99. The Court firstly notes that there are no discrepancies in I.G.'s statements. Before the investigating judge that witness described how he had been buying cocaine from the applicant between 2003 and 2005, which he would pick up either from the applicant personally or V.V. He talked about being in the applicant's home where the applicant had shown him pure cocaine and different powders he had mixed with it in order to get a bigger quantity, as well as the devices he had used for mixing and pressing drugs, such as a grey hydraulic press which the applicant had kept beneath the stairs outside the house (see paragraph 16 above). Indeed, the grey hydraulic press which matched I.G.' description was seized during the search of the applicant's house on 27 October 2010, and I.G.'s description of the applicant's house corresponded to the findings of the authorities during the search (see paragraphs 8, 34 and 40 above). Contrary to the applicant's contention, the Court notes that at the hearing held on 21 June 2011 I.G. did not say that he had never been to the applicant's home, only that he had never accepted the applicant's invitation to come to his home to try the cocaine he had been "cooking" (see paragraph 32 above).

100. The Court furthermore notes that I.G. suffered from certain mental issues. Indeed, he himself submitted that in 1988 he had gone through psychiatric treatment (see paragraph 16 above). According to the psychiatric report of May 2010 obtained in another set of criminal proceedings and submitted by the applicant, I.G. suffered from personality and bipolar

disorders but was capable of understanding the nature and purpose of the criminal proceedings and the consequences of procedural actions and was able to participate in the trial. The report noted that I.G. had underwent a psychotic phase in 1989 and 1998, and that in 2007 he had voluntarily applied to a clinic for treatment which, according to the psychiatric expert, meant that he had not been in a psychotic phase. It was furthermore noted that for a longer period of time he was stable, without any signs of psychosis, and that in April 2010 he had shown aggressive behaviour which had passed the following day (see paragraph 24 above). The Court notes that the trial court in the applicant's case refused to submit I.G. to psychiatric examination, holding that none of the trial bench members had suspected that he was mentally unstable (see paragraph 40 above, *in fine*). Having regard that I.G. was questioned in the course of two consecutive trial hearings (see paragraphs 32 and 34 above), the Court considers that the trial bench members were in a position to observe his demeanour and to form their own impression of his mental stability and credibility.

101. Lastly, I.G. openly talked about his argument with the applicant in 2006 as a result of, as that witness believed, the applicant reporting him to the police for heroin possession (see paragraph 16 above). The Court does not consider that this situation called into question I.G.'s detailed and consistent testimony as regards buying cocaine from the applicant, corroborated by the grey hydraulic press seized form the applicant's home about which that witness testified.

– *D.N.'s testimony*

102. The Court shall next examine the applicant's complaint that D.N.'s testimony should not have been taken as credible as it was contradictory and given by a mentally ill drug addict who was manipulated by the police (see paragraph 66 above).

103. The Court is of the view that the trial court had reasonable grounds to trust D.N.'s statement that he was given police protection in order to protect him from pressures from third persons regarding his testimony, including the applicant's wife. There are no indications that D.N. was manipulated or threatened by the police, including police officer G.Đ., who was present at the hearing of 7 June 2011 which was adjourned (see paragraph 27 above).

104. Furthermore the defence did not propose any evidence with a view to verifying whether D.N. had been influenced by the police. They rather relied on R.Č.'s statement that D.N. had told him that he had been threatened by the police, but that he had not understood him very well (see paragraph 31 above). The Court notes in that regard that D.N. stated that R.Č. had stopped communicating with him after he had given his testimony against the applicant before the investigating judge (see paragraph 30 above). Furthermore R.Č. claimed that he had not purchased amphetamines

from Goran Kovačević, whereas Goran Kovačević had expressly acknowledged this fact (see paragraphs 6, 19 and 39 above). The Court therefore does not find unreasonable that the trial court did not believe R.Č.'s statement as regards D.N. being under police pressure.

105. The Court furthermore notes that in his statements to the investigating judge and the trial court (see paragraph 17 and 30 above), D.N. talked about being a long-term cocaine user. He described how he had met the applicant through the applicant's wife and how he had bought cocaine from him, which he would pick up either from the applicant personally or from V.V. He also talked about having been deprived of his legal capacity for a period of two years and the fact that he had sold off his real estate to the applicant or the applicant's family members.

106. The Court notes that some minor discrepancies as to the sale of D.N.'s real estate do not cast doubt on the credibility of his testimony as regards buying cocaine from the applicant. Indeed, the applicant himself admitted that he had acted as an intermediary in the sale of D.N.'s property in Hvar to his sister and I.K., and that it was he who had given the applicant the purchase price (see paragraph 38 above). Furthermore, I.G. submitted to the investigating judge that V.V. had told him that D.N. had not actually been paying the applicant for the cocaine but that instead D.N. had promised to give him his flat in Zagreb (see paragraph 16 above).

107. The applicant contended that D.N. was falsely testifying against him because he had wished to retrieve the real estate that he had sold to his sister. The Court notes that no evidence was ever adduced that would confirm this.

108. The applicant lastly argued that D.N.'s statement was contradictory as regards the period during which he had allegedly been buying cocaine from him. He complained about the trial court's refusal to obtain any documents concerning the decision to divest D.N. of his legal capacity and concerning his treatment for drug addiction.

109. In this context, the Court observes that D.N. submitted before the investigating judge that he had bought cocaine from the applicant between 2003 and 2005, whereas before the trial court he submitted that that period had actually been between 2002 and 2006 (see paragraphs 17 and 30 above). The applicant contested the truthfulness of D.N.'s statement, arguing that D.N. had been divested of his legal capacity from July 2001 until November 2003, during which time he had not consumed drugs (see paragraph 24 above). The Court notes that D.N. submitted that he did not remember when exactly he had been deprived of his legal capacity but said it might have been between 2000 and 2002, during which time he had probably not been taking drugs (see paragraph 30 above).

110. The Court firstly notes that the trial court believed D.N.'s statement given to the investigating judge on 26 November 2010; that he had bought cocaine from the applicant between 2003 and 2005 (see paragraphs 15, 17

and 40 above). This was more favourable for the applicant than D.N.'s subsequent statement at the trial, that the period in question was actually four years (see paragraph 30 above).

111. The Court further notes that I.G. described how he had been buying cocaine from the applicant between 2003 and 2005, and how he had been present on various occasions when V.V., the applicant's intermediary and I.G.'s best man at his wedding, had been giving cocaine to D.N. (see paragraph 16 above). The domestic courts' conclusion that the applicant sold cocaine to D.N. was thus also based on I.G.'s witness testimony.

112. Having regard to D.N.'s detailed submissions as regards his relationship with the applicant and cocaine consumption, corroborated by I.G.'s witness testimony, the Court considers that the discrepancy in D.N.'s statement as regards the exact period during which he had been buying cocaine from the applicant did not undermine the probative value of his testimony (contrast *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 206, 26 July 2011).

113. The applicant tried to prove that D.N. could not have been taking drugs before the end of 2003, which would shorten the period of him allegedly selling cocaine to D.N. Indeed, the duration of his selling of cocaine (almost seven years), and the large quantity he was found to have sold, was taken as an aggravating circumstance against him (see paragraph 40 above).

114. The Court notes in this respect that the applicant was found to have sold cocaine to I.G. between 2003 and 2005 and to Goran Kovačević between 2008 and 2010 in the quantity of at least 500 grams (see paragraph 40 above). This on its own amounted to a large quantity of drugs sold during a long period of time of almost seven years. Furthermore, as noted above, there is nothing to call into question the domestic courts' conclusion that the applicant also sold cocaine to D.N. (see paragraph 112 above).

115. Accordingly, the Court considers that the domestic courts' decision not to obtain and examine the documents proposed by the defence (see paragraph 108 above) did not undermine the fairness of the proceedings.

– *Goran Kovačević's testimony*

116. The applicant furthermore argued that his conviction was based on the statement that his co-accused, Goran Kovačević, had given to the investigating judge under police coercion (see paragraph 66 above).

117. The Court notes in that regard that on 22 October 2010 Goran Kovačević submitted to the investigating judge that in August 2010 he had acted as an intermediary in the selling of amphetamines and that between 2008 and 2010 he had on several occasions bought cocaine from the applicant (see paragraph 6 above). At the hearing held on 4 July 2011, Goran Kovačević confirmed his confession as regards his acting as an

intermediary in the selling of amphetamines, but retracted his statement concerning his buying cocaine from the applicant. He submitted, for the first time after giving his statement to the investigating judge, that the police had coerced him into making such a statement. He also submitted that his sister had hired a lawyer to represent him on the night that he had been at the police station but that the police had not allowed that lawyer to see him (see paragraph 39 above). The domestic courts did not find Goran Kovačević's change of statement as regards his buying cocaine from the applicant credible, finding that it was done with a view to helping the applicant in the trial (see paragraphs 40 and 56 above).

118. In the case of *Goran Kovačević v. Croatia* (no. 34804/14, 12 April 2018), the Court examined Goran Kovačević's complaints that he had been ill-treated during his stay in the police station, denied access to a lawyer and pressured into making incriminating statements against his co-accused (that is to say the applicant in the present case). It found his allegations that he had been ill-treated and pressured into making incriminating statements against his co-accused conflicting and unsubstantiated and not "arguable" for the purposes of Article 3 of the Convention (ibid., §§ 45-59 and 77). It furthermore found that he had waived his right to be represented by a lawyer during his questioning by the police (ibid, §§ 71-75), and agreed with the domestic courts' ruling as not credible his complaint that on the day of his arrest his sister had hired a lawyer, D.H., to represent him, but that the police officers had refused to allow D.H. to enter the police station (ibid., § 76).

119. Accordingly, the statement that Goran Kovačević gave to the investigating judge that he had bought cocaine from the applicant between 2008 and 2010 was not obtained as a result of a violation of Article 3 of the Convention (see paragraph 89 above) or as a result of Goran Kovačević being denied access to a lawyer (see, by contrast, *Dvorski v. Croatia* [GC], no. 25703/11, § 112, ECHR 2015).

120. The Court notes that the applicant in the present case had the opportunity to cross-examine Goran Kovačević during the trial (see paragraph 39 above). It also notes that he was able to challenge the admission of Goran Kovačević's pre-trial statement and to put forward arguments for the exclusion of that evidence as unreliable (see *Sahakyan and Mkrtchyan v. Armenia* (dec.), nos. 57687/09, 63452/09 and 63455/09, §§ 106 and 107, 1 October 2013, and *Cutajar v. Malta* (dec.), no. 55775/13, 23 June 2015). It cannot therefore be said that the rights of the defence were not secured at the trial.

121. In the circumstances where Goran Kovačević retracted his pre-trial statement, the trial court had to make a choice between conflicting versions of the events. It had the advantage of having heard the oral testimony of Goran Kovačević and observing his demeanour at the trial. Having made its own assessment of the evidence before it, the trial court, in its assessment of

the evidence, found Goran Kovačević's pre-trial statement to be credible. In particular, it considered that Goran Kovačević retracting his pre-trial statement had been aimed at helping the applicant in the trial (see paragraph 40 above).

122. The Court reiterates in this respect that the assessment of evidence is in the first place a matter for the jurisdiction of the national courts. The Court will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017). Furthermore, the Court has on previous occasions found that where the domestic judicial authorities are confronted by several conflicting versions of the truth offered by the same person, the final preference for a statement given at the pre-trial stage over one given in an open court does not in itself raise an issue as regards the overall fairness of the proceedings where that preference is substantiated and the statement itself was given of the person's own volition (see *Camilleri v. Malta* (dec.), no. 51760/99, 16 March 2000 and *Makeyan and Others,* cited above, § 47).

123. The Court therefore accepts that the reasons given by the trial court for attaching more weight to the pre-trial statement of Goran Kovačević were sufficient to satisfy the relevant criteria established in the Court's case-law.

(2) Evidence which was not presented at the trial

124. The applicant argued that the trial court's statement in the judgment that "[t]he case file shows that many more people were invited before the police – witnesses who said one thing there and another thing before the investigating judge" indicated that the trial court had read the statements given by potential witnesses to the police that (under the Code of Criminal Procedure) could not serve as evidence in a criminal trial and as such should have been excluded from the case file. Moreover, the applicant had not had an opportunity to comment on these interviews, since they had not been presented at the trial. He also complained that the trial court's judgment had relied on judgments rendered in separate criminal proceedings against certain other persons that had not been presented as evidence during the trial (see paragraphs 67 and 68 above).

125. The Court reiterates that before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. The underlying principle is that the defendant in a criminal trial should have an effective opportunity to challenge the evidence against him. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require not merely that a defendant should know the identity of his accusers so that he is in a position to challenge their probity and credibility but that he should be able to test the truthfulness and reliability of their evidence, by having

them orally examined in his presence, either at the time the witness was making the statement or at some later stage of the proceedings (see *Lucà v. Italy*, no. 33354/96, § 39, ECHR 2001‑II, and *Sievert v. Germany*, no. 29881/07, § 58, 19 July 2012).

126. As for the applicant's argument that the trial court relied on the statements given to the police by potential witnesses that should have been excluded from the case file, the Court notes that on 15 December 2010 the investigating judge excluded from the case file police records on the questioning of different persons, since their use was not allowed in the further criminal proceedings. The investigating judge ordered that upon that the decision becoming final, the excluded documents be sealed in a special envelope and guarded by him and that they could not be viewed or used in the criminal proceedings. The Court notes that the excluded documents could not be found in the case file (see paragraph 21 above). It therefore cannot conclude that the trial court read statements given to the police by potential witnesses.

127. The Court furthermore notes that even though at the hearing held on 20 June 2011 the trial court ordered that police records on the questioning of D.N. on 26 October 2010 and I.K. on 17 August 2010, as well as the police report of 6 June 2008 be excluded from the case file, those records are still in the file (see paragraph 28 above). However, a careful reading of those documents shows that the trial court could not have been referring to them when stating that "[t]he case file shows that many more people were invited before the police – witnesses who said one thing there and another thing before the investigating judge" (see, by contrast, *Martin v. Estonia*, no. 35985/09, §§ 94-97, 30 May 2013). In particular, the fist record concerns a statement D.N. gave as a suspect (see paragraph 28 above). The Court notes that D.N. gave that statement in the presence of his lawyer and that he maintained that statement before the investigating judge (see paragraph 17 above). The second record concerns a statement which I.K. gave as a suspect, in which he did not mention the applicant and did not incriminate him in any way and thus this statement is irrelevant for the applicant's case (see paragraph 28 above). The report of 6 June 2008 concerns an event involving V.V., but not his giving of, or changing his statement (see paragraph 28 above). In these circumstances, even if the trial court read those documents, that could not have had any detrimental effect on the applicant's position in the trial.

128. The Supreme Court concluded that in using the expression "many people" the trial court must have been referring to witnesses who had been heard at the trial: Goran Kovačević, D.P. and R.Č. (see paragraph 51 above). In the Court's view, the trial court could not have been referring to Goran Kovačević, as it used the expression "many more people" precisely to explain its assessment regarding the credibility of Goran Kovačević's change of testimony (see paragraph 40 above). Furthermore, D.P. and R.Č.

were questioned as regards their buying amphetamines from Goran Kovačević, the applicant's co-accused in the trial (who was ultimately convicted of selling amphetamines). There is no information in the case file of which the defence or this Court could have been aware to indicate that before the investigating judge D.P. and R.Č. changed the statements that they gave to the police (see paragraphs 19 and 31 above).

129. The Court notes, however, that the case file shows that some persons indeed retracted the statements they had earlier given to the police. In particular, in his appeal against the decision concerning the opening of the investigation against him, the applicant contended that although it was true that M.V. had told the police that he had bought cocaine from him, M.V. had before the Dubrovnik County Court retracted that statement, explaining that he had been forced by the police to say something to that effect (see paragraph 12 above). Furthermore, on 26 November and 21 December 2010 the investigation was extended in respect of the applicant on the grounds that the police inquiry had determined grounds for suspecting that he had also been selling drugs to Z.M. and N.R. (see paragraphs 14 and 20 above); however, prosecution was not pursued against the applicant in that regard, since both Z.M. and N.R. denied to the investigating judge having bought drugs from the applicant (see paragraphs 19, 20 and 23 above).

130. Hence, it is possible that the trial court was referring to the fact that M.V., Z.M. and N.R. had changed their statements, since information in that respect was actually an integral part of the case file, as noted above. Although it is true that the defence was aware of M.V.'s, Z.M.'s and N.R.'s statements (since the applicant himself referred to M.V.'s change of statement, and the applicant's lawyer was present during Z.M.'s and N.R.'s questioning before the investigating judge – see paragraphs 12, 19 and 20 above), the fact remains that (1) the applicant was not being tried for selling cocaine to those persons, (2) no statements that those persons gave at any stage of the procedure were read out during the trial, and (3) those persons were not heard before the trial court. Thus, they should not have been examined or referred to by the trial court – not even only when assessing the credibility of Goran Kovačević's change of statement.

131. Accordingly, the Court cannot conclude that the trial court's judgment was based on police notes and records that had been excluded from the case file and could not serve as evidence in criminal trial. It can, however, conclude that the trial court probably referred to information which was in the case file and was known to the defence, and even partly referred to by the defence, but which was not examined during the trial in an adversarial procedure.

132. Regarding the applicant's complaint that the trial court's judgment referred to criminal proceedings against T.Z. and L.P. that were not presented as evidence during the trial, the Court observes that the criminal

proceedings in question referred to in the trial court's judgment were of no relevance for establishing the facts of the case and the applicant's conviction, but were rather referred to in order to describe the link between certain persons (see paragraph 40 above). The Court therefore agrees with the Supreme Court that the reference to those criminal proceedings did not affect the fairness of the applicant's trial (see paragraph 52 above).

(c) Impartiality

(i) General principles

133. The Court reiterates at the outset that it is of fundamental importance in a democratic society that courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 27).

134. To that end Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias, and its existence or otherwise can be tested in various ways. According to the Court's consistent case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test whereby regard must be had to the personal conviction and behaviour of a particular judge – that is to say whether the judge held any personal prejudice or bias in a given case – and also according to an objective test – that is to say by ascertaining whether the tribunal itself and (among other aspects) its composition offered sufficient guarantees as to exclude any legitimate doubt in respect of its impartiality (see *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009).

135. As to the subjective test, the principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). The Court has held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Wettstein v. Switzerland*, no. 33958/96, § 43, ECHR 2000‑XII); to overcome that presumption, the Court must have a stronger evidence of personal bias than a series of procedural decisions unfavourable to the defence (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 540, 25 July 2013). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86).

136. In the vast majority of cases raising impartiality issues the Court has focused on the objective test. However, there is no watertight division between subjective and objective impartiality, since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the

point of view of the external observer (the objective test) but may also extend to the issue of his or her personal conviction (the subjective test) (see *Kyprianou*, cited above, § 119).

137. When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Wettstein,* cited above, § 44).

(ii) Application of those principles to the present case

138. The applicant furthermore argued that the reasoning of the trial court's judgment displayed the presiding judge's personal hostility towards him. The Court will examine this complaint under the subjective test (see paragraph 135 above).

139. The Court firstly notes that there was nothing in the presiding judge's conduct during the trial (and nor did the applicant claim that there was) that would raise any doubt as regards his impartiality. The applicant's grievances relate solely to the reasoning of the trial court's judgment, which, according to him, was emotionally charged and showed open hostility towards him and his defence.

140. The Court notes that the applicant was tried and convicted by a bench composed of two professional judges and three lay judges (see paragraph 40 above). Judge Z.Č., a professional judge, presided over the bench.

141. The Court notes that the trial court's judgment accorded no credibility to the applicant's defence that he had not been selling drugs to I.G, D.N. and Goran Kovačević. In reaching that conclusion, the trial court relied on logical and precise arguments, such as the similar descriptions of the applicant's *modus operandi* in the accounts given by I.G., D.N. and Goran Kovačević (before the latter retracted his statement), and the fact that during the search of the applicant's house the police seized the above-mentioned grey hydraulic press, which I.G. had testified the applicant had used for pressing drugs. The trial court's judgment did not find that I.G.'s, D.N.'s statements incriminating the applicant had been fabricated for the purpose of revenge (in the case of I.G.) or retrieving the real estate sold to the applicant's family (in the case of D.N.), or that those witnesses were mentally unstable, as argued by the applicant. The trial court's judgment also did not give credence to the applicant's argument that D.N.'s police protection had been imposed in order to control that witness, or that Goran Kovačević had incriminated the applicant under police duress. As examined in detail above, there is no evidence to suggest that that assessment was in any way arbitrary.

142. The Court notes that the trial court's judgment assessed evidence and facts in a vivid and direct manner. It opened its explanation of the

decision by stating that it did not find credible the applicant's defence, and then proceeded to list valid reasons for reaching such a conclusion.

143. The trial court's judgment concluded that the applicant had been proved guilty. By linking all the facts and the applicant's own statements during the trial, the trial court gave clear arguments for the conclusions that it had drawn. The fact that it expressed its opinion in an open and direct manner did not imply personal involvement in the case.

144. The Court has examined the points referred to by the applicant, and in particular the part of the trial court's judgment describing the applicant's motive in committing the criminal offence and the part devoted to establishing the aggravated circumstances. It has not, however, detected any bias.

145. Lastly, the Court further notes that the Supreme Court addressed and cured the issues that might have potentially implied alleged bias of the trial court in that it reduced the applicant's sentence, holding that certain circumstances, which the trial court had taken as aggravating, should not have been assessed in that way, such as the fact that the witness had been pressured by third persons, the applicant's "attitude towards the court", and his personal views about the witnesses. However, it did not find that the presiding judge had been partial.

146. The Court has, accordingly, found no evidence capable of calling into question the presiding judge's personal impartiality.

147. Finally, as regards the applicant's contention that the trial court's impartiality had been put in question in that the judges had read the minutes of the police interviews which could not be used as evidence against him (see paragraph 69 above), the Court has already found that those police records were either no longer in the case file (see paragraph 126 above) or did not contain any information which would be detrimental for the applicant's position in the trial (see paragraph 127 above).

148. There has therefore been no violation of Article 6 § 1 of the Convention on that account.

(d) Attendance of witnesses on the applicant's behalf

149. The applicant lastly complained that the trial court had refused to hear all witnesses proposed by the defence, without giving adequate reasons (see paragraph 71 above).

150. The applicable general principles concerning the examination of defence witnesses under Article 6 §§ 1 and 3 (d) of the Convention have been set out in the case of *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 139-168, 18 December 2018).

151. Since the Convention does not require the attendance and examination of every witness on behalf of the accused, the courts cannot be expected to give a detailed answer to every application lodged by a defence, but they must provide adequate reasons for dismissing such applications.

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 a defence's request for the examination of a witness (see *Murtazaliyeva*, cited above, §§ 164-66).

152. In the Court's view, the reasons given by the trial court for declining to hear the proposed witnesses were appropriate, given the circumstances of the case, and were adequate, in terms of their scope and level of detail, with regard to the reasons advanced by the defence for its request. Furthermore, in view of the principles established in its case-law and of the above findings, the Court concludes that it cannot be said that the failure to examine the above-mentioned defence witnesses prejudiced the fairness of the proceedings (compare *Gregačević v. Croatia*, no. 58331/09, § 64, 10 July 2012, and *Bosak and others v. Croatia*, no. 40429/14, §117, 6 June 2019).

(e) Assessment of the "overall fairness" of the proceedings

153. The Court examined in detailed the applicant's objections regarding each piece of evidence, the alleged lack of impartiality of the trial court and the refusal of the trial court to hear witnesses proposed by the defence.

154. It found that the trial court should not have referred in the judgment to information that had not been examined during the trial in an adversarial procedure (see paragraphs 129-131 above). However, in the Court's view, having regard that the latter information was in the case file and was known to the defence, and even partly referred to by the defence, a thorough consideration of the matter shows that this did not undermine the fairness of the proceedings as a whole.

155. The Court did not find any issue regarding the applicant's remaining complaints (see paragraphs 92-127 and 133-152 above).

156. Accordingly, the Court concludes that the proceedings in question, taken as a whole, satisfied the requirements of a fair and impartial trial.

157. It follows that there has been no violation of Article 6 § 1 in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Abel Campos
Registrar

Krzysztof Wojtyczek
President