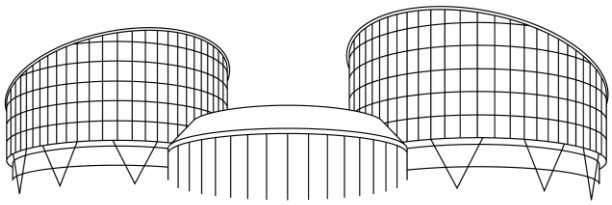

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PAPADAKIS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 50254/07)

JUDGMENT

STRASBOURG

26 February 2013

FINAL

26/05/2013

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

In the case of Papadakis v. the former Yugoslav Republic of Macedonia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 5 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 50254/07) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Lampros Papadakis ("the applicant"), on 22 October 2007.

2. The applicant was represented by Mr P. Cobovski, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mr K. Bogdanov.

3. The Greek Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44), did not express the intention to do so.

4. The applicant alleged a violation, in particular, of his defence rights under Article 6 of the Convention with respect to evidence produced by a witness whose identity had not been disclosed and of his property rights in relation to a court order that he reimburse the storage costs for his car that had been seized.

5. On 8 June 2011 the alleged unfairness of the criminal proceedings and interference with the applicant's rights under Article 1 of Protocol No. 1 to the Convention were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and lives in Thessaloniki, Greece.

A. Criminal proceedings against the applicant

1. Special investigative measures

7. On 10 November 2005 the public prosecutor ordered, under sections 42 § 2(2) and 142-b of the Criminal Proceedings Act ("the Act", see paragraphs 65 and 68 below), secret surveillance, audio-visual recording and the use of undercover agents, as special investigative measures. The order was valid between 10 November and 10 December 2005 and concerned the whole territory of the respondent State. It was issued on the basis of a request from the Ministry of the Interior ("the Ministry"), which suspected that nationals of Greece and the former Yugoslav Republic of Macedonia, whose identity was unknown, were involved in drug trafficking. According to the information available at that time, the suspects were supposed to meet on 10 November 2005 in Skopje. It was believed that samples of drugs (cocaine) would be given to the undercover agents so that they could verify its quality. The order allowed the use of undercover agents (their number was not specified) from the Athens office of the US Drug Enforcement Administration ("DEA") in the operation. Those agents were also allowed to take part in the same operation in Greece.

8. On 19 November 2005 the Ministry produced three reports concerning the use of the special investigative measures. They were accompanied by sixty-six photographs taken on 10 and 18 November 2005.

9. According to report no. 16.4-9122/1, on 10 November 2005 two DEA undercover agents arrived in the respondent State in order to meet Mr B.V., a Greek national who had also entered the respondent State that day. Mr B.V. had met two people in Skopje earlier that day, one of whom was the applicant. The critical meeting had taken place in a cafe bar in Skopje. Mr D.V. and Mr N.B. had joined them later. At the meeting, they had discussed a drug deal, namely that 10 kg of cocaine be sold to the undercover agents. Mr D.V. had suggested that they meet soon in Thessaloniki, where he would provide a sample of the drugs. On 14 November 2005 the Ministry was informed by its counterparts in Greece that the undercover agents had met the applicant, Mr B.V. and Mr D.V. that day in Thessaloniki. On that occasion, a sample of the cocaine had been handed over to the agents. It had been agreed that the drugs would be delivered on 18 November 2005 in Skopje. On 17 November 2005 the undercover agents arrived in the respondent State. The next day the

applicant entered the respondent State in a Suzuki Vitara car with Greek registration plates. According to the report, he did not contact the undercover agents during that time. After Mr B.V. had received the money for the drugs in Thessaloniki, the police arrested Mr D.V., Mr N.B. and Mr A.T. at the border crossing with Bulgaria with 10 kg of cocaine in their car and arrested the applicant in Skopje. At the same time, Mr B.V. was arrested in Thessaloniki.

2. Pre-trial proceedings

10. On 19 November 2005 an investigating judge of the Skopje Court of First Instance ("the trial court") opened an investigation concerning the applicant, Mr D.V., Mr A.T., Mr N.B. and Mr B.V. on the basis of a reasonable suspicion of drug trafficking. He took oral evidence from the applicant and an undercover agent, whose identity was not disclosed. The applicant remained silent. Interpretation between Macedonian and Greek was provided.

11. The undercover agent presented his evidence in Greek. He gave evidence in the presence of the public prosecutor. A translation into Macedonian was also provided. The witness confirmed that he had met the applicant, Mr B.V. and Mr D.V. in Thessaloniki, Greece, in September 2005, where they had discussed a drug deal. On 10 November 2005 the witness had arrived at the cafe bar in Skopje where he had met the applicant, Mr B.V., Mr D.V. and another person. They had agreed that a sample of the drugs would be handed over to him on 14 November 2005 in Thessaloniki. On 14 November 2005 he had met the applicant, Mr B.V. and Mr D.V. in a cafe bar in Thessaloniki, where they had agreed that the drugs would be delivered to him on 18 November 2005 in Skopje and that Mr B.V. would receive the money the same day in Thessaloniki. Being shown photographs of the meeting at the cafe bar in Skopje taken on 10 November 2005, the witness recognised the applicant and some of his co-accused as having been present.

12. On 16 December 2005 the public prosecutor filed an indictment with the trial court charging the applicant, Mr D.V., Mr A.T. and Mr B.N. with drug trafficking. He successfully requested that the investigation concerning Mr B.V. be discontinued, as he was not within the reach of the domestic authorities. According to the indictment, the accused, together with Mr B.V., had acted in concert. On 10 November 2005 the applicant, Mr D.V. and Mr B.V., as sellers, had met two undercover agents, the buyers, in a cafe bar in Skopje in order to discuss the sale of about 10 kg of cocaine. On 14 November 2005 the applicant, Mr B.V. and Mr D.V. had met one of the undercover agents in Thessaloniki and had given him a sample of the drugs. On that occasion, they had agreed that the drugs would be handed over to the undercover agents on 18 November 2005 in Skopje, while at the same time Mr B.V. would receive money in payment for the

drugs in Thessaloniki. On 18 November 2005 Mr D.V., Mr B.N. and Mr A.T., using an Opel Astra owned by Mr A.T., had travelled to Bulgaria, where they had bought 10.5 kg of cocaine from an unidentified person. At 9 p.m. the same day customs officers of the respondent State had found the drugs under the rear seat of the car.

13. The public prosecutor requested that the trial court take oral evidence from the accused and the undercover agents. The charges were further based on the order of 10 November 2005 (see paragraph 7 above), an expert report (drawn up on 19 November 2005, according to which the substance found in the Opel Astra had been cocaine), search reports, seven certificates for temporarily seized objects, photographs, two DVDs and the reports regarding the use of special investigative techniques (see paragraph 8 above).

14. After 26 January 2006 and on the applicant's request, Serbian interpretation was provided by Mr P. Cobovski.

15. On 6 February 2006 the trial court dismissed an objection to the indictment lodged by the applicant in which he alleged, *inter alia*, that his defence rights had been violated during the investigation. This decision was translated into Serbian.

3. Proceedings before the trial court

16. After 1 March 2006, the applicant was represented by two domestic lawyers of his own choosing. On that date, the trial court allowed a motion for the video material recorded on the DVDs (see paragraph 13 above) to be shown in the presence of the applicant's representatives only. On 20 March 2006 the applicant was also allowed to watch parts of the video material. On this latter date, a copy of the deposition taken from the undercover agent on 19 November 2005 (see paragraph 11 above) was provided to the applicant. The court further admitted in evidence a detailed list of incoming calls on the mobile phones confiscated from the accused.

17. At a hearing on 10 April 2006, the applicant requested a direct confrontation with the undercover agent examined on 19 November 2005 since putting questions in writing would protract the length of the proceedings. He was allowed to inspect photographs which had been developed from the video material recorded on the DVDs. The Ministry's report concerning the other photographs taken (see paragraph 8 above) was translated into Serbian by an authorised interpreter.

18. On the same date, the available co-accused gave oral evidence. Mr D.V. stated that he had had business relations with the applicant and that their meetings during the critical time had concerned business matters. Mr A.T. stated that he had occasionally met the applicant at the business premises of Mr D.V. Mr B.N. stated that his contacts with the applicant had been sporadic and had always occurred through Mr D.V. The latter had often invited him to attend meetings with his business partners. He had been

told by Mr D.V. that the applicant and Mr D.V. had discussed business matters related to the textile trade.

19. On 5 May 2006 the applicant, with the assistance of the Serbian interpreter, gave oral evidence. He confirmed that he understood the charges against him. The applicant described his long business history with partners from the respondent State and Serbia. He stated that he had never met Mr A.T. and Mr B.N. The only exception to that had been some meetings with Mr D.V. at which Mr B.N. had been present. He confirmed that he had met Mr D.V. and Mr B.V. in Thessaloniki. On that occasion, Mr B.V. had been accompanied by two persons whose identity had been unknown to him. He had recognised one of them on the video material contained on the DVDs. He confirmed that he had attended the critical meeting in the cafe bar in Skopje, but he denied that he had discussed drug trafficking.

20. At the hearing, the public prosecutor informed the court that efforts had been made to secure the attendance of the undercover agent or to enable his questioning for the next hearing.

21. On 12 May 2006 the public prosecutor requested that the trial judge summon the undercover agents who had been involved in the operation. As stated in the request, the identity of the undercover agents had been unknown to the prosecution. In this connection the trial judge asked the Macedonian Ministry of Justice and the responsible authorities in Greece to secure the attendance, for the hearing scheduled for 29 May 2006, of the witness who had given evidence in the pre-trial proceedings (see paragraph 11 above).

22. According to the court record of 29 May 2006, there was no information that the court summons had been duly served. The public prosecutor further informed the court that serious efforts had been made to secure the attendance of the undercover agent.

23. On 7 June 2006 another request was sent to the Ministry of Justice so that the undercover agent, who had testified in the pre-trial proceedings, would be present at the hearing scheduled for 21 June 2006. With a letter specified as "very important" (*многу итно*), on 16 June 2006 the Ministry of Justice of the respondent State forwarded the trial judge's letter of 7 June 2006 to the Greek Ministry of Justice.

24. The court held a hearing on 21 June 2006. An undercover agent, other than the one heard on the hearing of 19 November 2005, was present and placed in a special room secured by the court. As noted in the court record, the attendance of the second undercover agent was not secured. The trial court, under section 270-a § 3 of the Act (see paragraph 73 below), heard oral evidence from the undercover agent. As noted in the transcript of the statement, he was one of the undercover agents referred to in the public prosecutor's order of 10 November 2005 whose examination had been requested in the indictment (see paragraph 13 above). The examination was carried out in the presence of the president of the panel, the public

prosecutor, an authorised court interpreter and a court clerk. The applicant and his lawyers were not present. According to the witness's testimony, the witness had not previously given any statement before a judicial authority. As he presented evidence in English, a translation was provided into Macedonian by the interpreter. The witness stated:

> "... I'm a special agent of the DEA and I was involved in the investigation as an undercover agent authorised by the Macedonian Ministry of the Interior. In August 2005 my office received information that there was a Balkan drug network involving Greek and Macedonian nationals. We identified a person called Mr B.V. ... On 29 August 2005 I managed to infiltrate the organisation and I personally met [Mr B.V.] in Thessaloniki. He told me that his associates had large quantities of cocaine in Macedonia ... I told him that I was interested in buying 50 kg of cocaine, but that since we'd just met, I'd decided to buy only 10 kg and would buy another 40 kg later. I called another undercover agent to join us. We were in a cafe bar in Thessaloniki. The undercover agent arrived. He had a bag, which he put on the ground between me and Mr B.V. I opened it so that Mr B.V. could see that there were 400,000 euros (EUR) inside ...
>
> During the first week of September 2005, we managed to introduce another undercover agent to Mr B.V. in Thessaloniki. [The applicant] also attended this meeting. I know his name since Mr B.V. introduced him to me ... On 19 September 2005 my colleague met Mr B.V., [the applicant] and two Macedonian nationals, one of whom we identified later as D. [Mr D.V.]. Mr D.V. told my colleague that ... he could supply [the cocaine] at a price of EUR 40,000 per kg. My colleague talked with Mr B.V. and [the applicant] in Greek and they translated for Mr D.V. since he did not understand Greek ... On 2 November 2005, my colleague and I met Mr B.V. in Thessaloniki. That was the first time that two undercover agents met Mr B.V...
>
> On 10 November 2005 I arrived in Macedonia together with my colleague. I called Mr B.V. and we agreed to meet in the I.P. cafe bar. After fifteen minutes, Mr B.V. and [the applicant] arrived. We were sitting together and I told Mr B.V. and [the applicant] that I didn't want to see the cocaine ... and that instead, I wanted them to bring a sample of the cocaine to the cafe bar. Mr B.V. said that he ... needed to call his associate ... After fifteen minutes, Mr D.V. and another person arrived and joined us. Mr D.V. said that he could not bring the sample, but that he could secure it the next day if I stayed in Macedonia overnight ... In order to be sure that we got 10 kg of cocaine of good quality, we asked Mr D.V. to cut a piece from each package containing 1 kg of cocaine. [The applicant] said that in that case we must pay for the sample since if the sample was small it might pulverise. I think it is important to mention that since [the applicant] and Mr D.V. spoke the most, it was clear to me and my colleague that they took the decisions and that Mr B.V. was more silent. We spoke in Greek and [the applicant] translated for Mr D.V...
>
> On 14 November 2005 my colleague met Mr B.V., [the applicant] and Mr D.V. in a cafe bar in Thessaloniki. Mr D.V. handed over to my colleague a sample of 0.02 kg of cocaine ... After my colleague verified that the cocaine was of good quality, he told Mr D.V., [the applicant] and Mr B.V. that we would come to Macedonia to collect the cocaine and that we would pay in Thessaloniki ... The agreement was that my colleague and I would travel to Macedonia in order to meet [the applicant] and that Mr B.V. would remain in Thessaloniki so that one of my colleagues could show him the money.

> On 18 November 2005 my colleague and I arrived in Macedonia to meet [the applicant] ... I called [the applicant] to tell him that we were in downtown Skopje. [The applicant] told me that he was waiting for his associate and that he would meet me soon. At the same time in Thessaloniki, Mr B.V. met my colleague, also an undercover agent, who showed him 400,000 EUR which was to be paid, under the agreement, for 10 kg of cocaine ... After the money had been shown, I was still waiting for [the applicant]. I called [the applicant] again and he replied that everything was OK and that his men were coming to finish the job. [The applicant] also told me that he had spoken with Mr B.V., who had confirmed that he had seen the money. At about 9 p.m. I was informed by your services that a car transporting the drugs had been stopped at a border crossing and that the cocaine, I think 10 kg, had been found ... Your police arrested [the applicant]. Soon after ... I spoke with my office in Greece, which arrested Mr B.V. After all those involved had been arrested, my colleague and I went to court to give a statement before an investigating judge. On that occasion, my colleague gave a statement, but before I could have testified, I was informed that I had no authorisation from my office and so, I gave no statement. I now have that authorisation and that's why I'm here today ..."

25. Being shown the photographs of the meeting in the cafe bar in Skopje on 10 November 2005, the witness recognised the applicant and some of his co-accused. The witness further stated that the applicant spoke Serbian.

26. According to the court record, the witness's examination lasted from 9.30 a.m. to 12 noon that day (21 June 2006). Relevant parts of the court minutes read as follows:

> "after oral evidence was taken from the person whose identity was protected (*прикриен идентитет*) ... the panel gives a transcript of his statement to the accused and their lawyers. They have an hour to read it, to consult their representatives and prepare questions, which the president of the panel, in the presence of the public prosecutor, the interpreter and minutes-holder, would communicate to the witness.
>
> ...
>
> The representative of Mr Lampros Papadakis, Mr I.P. from Skopje, sought that the court notes that ... (the witness's statement) is new evidence admitted on request by the prosecution despite the fact that no indication was given regarding the circumstances in respect of which that witness would testify. I would like to underline that the one-hour time-limit given by the court is too short for a complete analysis of the statement and formulation of questions since we had no indications so far that this evidence would be admitted. There are no technical conditions in the courtroom for all accused and their lawyers adequately to prepare and put questions. He requested that the court allows at least 24 or 48 hours in order to be able to formulate questions.
>
> [The applicant's] lawyer, Mr G.K., requested that his client is served with a transcript of the witness's statement translated into Serbian ...
>
> ...
>
> [The applicant] also requested to be served with a transcript of the witness's statement translated into Serbian.
>
> ...
>
> After the court had retired and deliberated and after the witness's statement had been translated by an authorised interpreter, the court decided to serve [on the

applicant] a translation of the statement. The lawyers' requests to be given 24 or 48 hours or seven days (as requested by other co-accused) to prepare written questions for the undercover witness are dismissed given the fact that the undercover witness had twenty-four-hour leave to remain (in the respondent State). It is not accordingly possible to grant the lawyers' requests nor there are statutory rules specifying compulsory time-limit to be given to the accused and their lawyers to prepare questions to be put in writing, through the court, to the witness.

...

At 3,10 pm. sharp, the court decides to give one hour to the accused and their lawyers to prepare questions to be put to the undercover witness ..."

27. After the time-limit set by the court had expired, the accused, including the applicant, stated that they could not formulate any question to be put in writing to the undercover witness due to insufficient time. The court record stated *inter alia*:

" ... After this time-limit expired ... all the accused and their lawyers stated that they were unable to put any questions at this moment ...

... The lawyer of the first-accused requests adjournment of the hearing since it is 6 pm. and the hearing started at 9 am. During this time, the accused, as well as the security guards, are present in the courtroom ..."

28. In a written submission of 10 July 2006, the applicant formulated five questions to be put in writing to the undercover agent examined, as stated in the submission, on 5 November 2005.

29. At a hearing on 11 July 2006, the trial court did not admit those questions. It further stated that:

"[the accused and their lawyers] have already been given, at the previous hearing when this person (the undercover agent) was present, the opportunity to put questions. After the examination of this witness had ended at 12 am., a written transcript of the statement was given to the accused and their lawyers who had the opportunity, until 6 pm., when the hearing was closed, to put those questions."

30. Other relevant parts of the court record of that date read as follows:

"[The applicant's] lawyer insists that the court summons both witnesses who are undercover agents in order that the accused and their lawyers question them directly. The analysis of the written statements given by the two witnesses revealed inconsistencies and they consider that [the witnesses'] statements were based mainly on presumptions of what had happened. Just in small part they concerned real facts ... For these reasons, I (the applicant's lawyer) would like to put the questions, which I've prepared, directly to these witnesses ... in order to prevent them to construct a story in support of the indictment. At this moment, I have prepared around sixty questions to put to these two witnesses, but I will not put them today since they are not present."

31. The trial court ordered the public prosecutor either to secure the attendance of the undercover witnesses or to establish a communication link with them for hearings scheduled for 4 August and 1 September 2006. The trial judge rejected the public prosecutor's request that the court secure the attendance of the undercover witnesses itself, since they had been proposed

by the public prosecutor. In this connection the court stated that the attendance of the undercover witness examined on 21 June 2006 had been secured by the public prosecutor, without any court summons having been served on that witness beforehand. Furthermore, the court had not been informed of their names and the addresses where summonses could be served. The court stated that it would try however to summon one of the undercover witnesses by means that it had already used, notably through the Ministry of Justice.

32. On 11 July 2006 the court summoned "a Greek national, undercover agent-protected under section 142 (b) §§ 1 and 6 of the Criminal Procedure Act" to attend a hearing scheduled for 1 September 2006.

33. On 4 August 2006 the court concluded that the public prosecutor had not complied with the court's order of 11 July 2006 regarding the examination of the undercover witnesses. The applicant requested that the court ordered the public prosecutor to secure compulsory attendance of the undercover witnesses at the trial since it was crucial for his defence.

34. At the hearing on 1 September 2006 the trial court established that the public prosecutor had failed to secure the attendance of the undercover agents and that it had not received any information as to whether the court summons had been delivered by the Ministry of Justice to one of the undercover agents. Since the public prosecutor withdrew the evidence given by the agent on 19 November 2005, the court read aloud, despite all accused protesting, the statement of the undercover witness given on 21 June 2006. The statement of the undercover witness given in the pre-trial proceedings was, however, not included in the case file and was not taken into consideration by the court. The applicant requested that the court examine Mr B.V., who was in custody in Greece, regarding the nature of their contacts between May and November 2005 and the contents of the discussion during the meeting in the cafe bar in Skopje on 10 November 2005. As to that meeting, the applicant also requested that the court examine the waiter who had been in the cafe bar on the critical day, two officials who had recorded the meeting and the technician who had transferred the video material onto the DVDs. The court rejected the applicant's request for examination of those witnesses, considering that it had already admitted sufficient evidence with which to establish the facts of the case. It also refused to admit in evidence a non-certified copy of documentary evidence submitted by the applicant in Greek.

35. On 11 September 2006 the applicant unsuccessfully requested that the trial court admit in evidence a copy of a non-translated indictment that had been sent to the applicant's family in Greece on 8 September 2006. According to the applicant, it concerned the same offence as that of the trial proceedings. In concluding remarks given on the same date, the applicant complained that he had been denied the right to question the undercover witness examined at the trial because the witness had had limited leave to

remain in the respondent State, that there had been no live streaming of his examination despite the fact that streaming media had been available, that not all the documents in the case file had been translated into a language that he understood, that the trial court had rejected his request to admit in evidence documents attesting to his business activities in the respondent State, and that the video material could not be relied upon to establish the facts, owing to time gaps and the absence of audio on the recording.

36. On 14 September 2006 the trial court delivered a judgment, running to fifty-eight pages, in which it found the applicant guilty and sentenced him to eight years' imprisonment. It further ordered the confiscation of the Opel Astra and several mobile phones and SIM cards. The court stated that it had established the facts on the basis of oral and documentary evidence admitted at the trial. According to the judgment:

> "the court established the time, place and way in which the offence had been committed, as well as the quantity of drugs, on the basis of the statement given by the person who had been authorised, under the public prosecutor's order of 10 November 2005, to act as an undercover agent, to follow persons and collect information."

37. The court transferred in the judgment the entire statement of the undercover witness given on 21 June 2006. It stated that it gives full weight (*во целост му поклони верба*) to that evidence since it was clear, coherent and was supported by other physical evidence described in the indictment (see paragraph 13 above). In this connection the court stated that:

> "the court had in mind that the undercover witness had been in fact a special DEA agent who had been involved in the investigation as an undercover agent authorised by the Ministry."

38. The court stated that the undercover witness had been examined at the hearing held on 21 June 2006 in the presence of the president of the panel, the public prosecutor and the interpreter, at a place where the protection of his identity had been guaranteed. It further confirmed that the witness had not attended all the meetings to which he had referred in his testimony. However, there was no doubt as to the credibility of his statement given the fact that he had infiltrated the group with his colleague, with whom he had worked closely and had exchanged relevant information regarding the case.

39. As regards his questioning, the court stated that the applicant had been given four hours (between noon and 6 pm.) after being served with the transcript of the witness's statement in a language that he had understood to put questions to him in writing. No extension of this time-limit could have been granted, given that the witness had only had leave to remain for twenty-four hours in the respondent State. No such extension was provided for in section 270-a of the Act (see paragraph 73 below). In any event, had the applicant been confronted with the witness, he would have been required to question him immediately. The court further found that the public

prosecutor had ordered the audio-visual recording and the use of undercover agents at the Ministry's request and under section 142-b §§ 1(3) and (6) of the Act. The court also watched, in the applicant's presence, the video material recorded on the two DVDs and described the events as filmed. It found that the time gaps in the video material had not affected the credibility of that evidence. Lastly, the court gave a detailed account of the oral evidence provided by the remaining accused, but it disregarded it as unsubstantiated.

40. As regards the applicant's defence, the court accepted that he had long-standing business relationships in the respondent State and with Mr D.V. and that he had travelled often between Greece and the former Yugoslav Republic of Macedonia. It further accepted that the applicant had occasionally met Mr A.T. and Mr B.N. However, it did not accept his argument that he had discussed business-related issues at the critical meetings in Thessaloniki and Skopje, as this was not supported by any evidence and was contrary to the evidence provided by the undercover agent.

41. The court also stated that during the trial the applicant had been assisted by a sworn interpreter, who had provided interpretation between Serbian and Macedonian. Furthermore, all the decisions and documents in the case file had been translated into Serbian, the language of which the applicant claimed to have a sufficient command. The applicant had been given a transcript of the judgment translated into Serbian.

4. Proceedings before the Appeal and Supreme Courts

42. On 9 and 10 November 2006 respectively two appeals were submitted on behalf of the applicant, in which he complained that: (1) the undercover agent whose evidence given in the pre-trial proceedings had served as the main evidence against him had not been examined in adversarial proceedings. In this connection, he complained that he had not been served with a transcript of the statement of that witness. Furthermore, it had been unclear which of the two agents the trial court had referred to in its judgment. He also complained that he had been denied the right to question the witness examined at the trial; (2) the indictment and other written material in the case file had not been translated into Serbian, the language which he understood; (3) the trial court had rejected his request to admit in evidence documents confirming his business relationships in the respondent State; (4) Mr B.V. had been in custody in Thessaloniki and a statement could therefore have been obtained from him; and (5) the video material recorded on the DVDs had not been credible.

43. In further submissions of 20 November 2006, the applicant complained that he had not been given adequate time to prepare his defence, which had prevented him to question the undercover witness examined at the trial. In this connection, he argued that within the four-hour time-limit

that the trial court had referred to in its judgment (between 12 am and 6 pm), the court had been required to translate the witness's statement, the questions and replies into the language of which the applicant had sufficient command, which, given the circumstances, had been insufficient. He further argued that the undercover witness examined at the trial had been the sole evidence on which his conviction had been based and that there was no other evidence regarding the contents of the discussions held on 10 November 2005 in the cafe bar in Skopje. Furthermore, he argued that the undercover witness had been involved in the crime as an *agent provocateur* and that the court should not have relied on evidence obtained from that witness in order to convict him. The applicant also complained that the video material, which had not been accompanied by a soundtrack, had been obtained unlawfully.

44. At a public hearing held on 16 February 2007 at which the authorised interpreter in Serbian was present, the Skopje Court of Appeal dismissed the applicant's appeals and upheld the trial court's judgment. It held that the trial court had not erred in fact or law and had provided clear and sufficient reasons for its judgment. The lower court had made an objective, global and logical analysis of all adduced evidence, taken alone and together. It found that the evidence had been lawfully obtained, since the special investigative measures had been ordered by the public prosecutor at the Ministry's request. It explained that it had been impracticable to obtain an audio recording. However, the witness examined at the trial had identified the applicant on the photographs and had confirmed that the video material concerned meetings at which a drug deal had been discussed. The court also upheld the trial court's reasoning regarding the translation of the documents and pleadings into a language of which the applicant had a sufficient command. As regards the trial court's alleged failure to hear evidence from Mr B.V., the court found that there had been no bar to carrying on with the proceedings against the remaining accused, despite the fact that Mr B.V. had not been within the reach of the domestic authorities. Furthermore, the accused's role in the crime had been supported by the undercover witness's testimony and other documentary evidence.

45. The court further stated that the undercover witness had been examined in accordance with the Act, which allowed his identity to remain undisclosed (*службена тајна*). The witness had not incited the commission of the offence, but had acted within the limits of the powers entrusted to him by the competent authorities. The applicant's request for extension of the time-limit for questioning this witness, who had had limited leave to remain in the respondent State, had been aimed at prolonging the proceedings.

46. Lastly, the court rejected the argument that the applicant had raised at the public hearing that criminal proceedings regarding the same offence had been pending against him in Greece. In this connection, it reviewed the applicant's submissions and confirmed that they had concerned a non-

certified copy of an indictment in Greek which had been submitted to a trial court. Consequently, it could not have been admitted in evidence. Assuming that it had been dated 8 September 2006, it found that it was for the competent courts in Thessaloniki, Greece to consider whether the applicant would be tried twice for the same offence.

47. The applicant made several written requests to be served with a transcript of the appellate judgment translated into the language of which he had a sufficient command. After the communication of the case, the respondent Government submitted a transcript of the judgment translated into Serbian by Mr Cobovski, which, according to the applicant, had not been served on him in accordance with the applicable rules.

48. On 2 April 2007 the applicant lodged an appeal on points of law with the Supreme Court in which he complained that his conviction had been based solely on the evidence given by the undercover witness at the trial, which had been obtained unlawfully. The other evidence had not established the applicant's involvement in the crime and his connection with his co-accused. The evidence produced by the undercover witness examined at the trial had been admitted contrary to the procedural rules, namely the prosecution had not sought that witness to be examined "before the accused and their lawyers" nor had it specified the facts which that evidence had aimed to elucidate. He further complained that he had been given insufficient time to analyse the evidence given by that witness and to put questions to him. That had violated his defence rights. He also resubmitted the remaining complaints (see paragraphs 42 and 43 above).

49. On 25 April 2007 the Supreme Court dismissed the applicant's appeal, finding no evidence to cast doubt on the facts as established and the reasons given by the lower courts. It found that the testimony of the undercover witness given at the trial had been clear and coherent and it had provided a chronological description of facts relevant for the crime. It had not been the only evidence on which the applicant's conviction had been based. Other oral and documentary evidence admitted at the trial were in support of that evidence. The undercover witness had been examined in accordance with section 270-a of the Act and the applicant had been given the opportunity to put questions to him in writing. It further stated that the courts were not required to admit evidence which in their opinion would not elucidate the relevant facts. Referring to the material in the case file, it concluded that all the documents had initially been translated into Greek until the courts, at the applicant's request, had ordered translation into Serbian.

50. By decisions of 8 July and 3 October 2008 respectively the courts, at two levels of jurisdiction, dismissed the applicant's request for the reopening of the proceedings. The courts found that the applicant's arguments, namely (1) that the undercover witnesses examined by the domestic courts had been, in fact, Mr G.P. and Mr V.P., police agents who

had been examined by the Greek criminal courts in the proceedings against him, and (2) that the trial court had failed to examine Mr B.V. and to admit in evidence the indictment submitted before the Greek courts, had already been considered by the domestic courts, but had nevertheless been dismissed. The applicant argued that in the criminal proceedings, the trial court had refused to consider the indictment submitted by the Greek prosecutor, although the identity of the undercover witnesses had not been protected in that document.

B. Proceedings regarding the return of the car seized from the applicant and regarding his request for exemption from storage costs

51. On 19 November 2005 the Ministry seized from the applicant the Suzuki Vitara car ("the car") with which he had entered the respondent State on 18 November 2005 (see paragraph 9 above). It also confiscated his driving licence and the car keys. On 2 March 2006 the applicant requested that the trial court order the return of the car, arguing that it had not been related to the offence with which he was charged. This request remained unanswered by the trial court.

52. On 27 November 2008 the applicant submitted a fresh request that the car be returned to him, since the trial court, in its judgment of 14 September 2006 (see paragraph 36 above), had not ordered its confiscation. On 2 December 2008 the trial court dismissed this request on the grounds that the car had been seized by the Ministry.

53. In letters of 5 and 6 March 2009 the Ministry informed the applicant that the car, his driving licence and the keys had been handed over to the trial court on 14 and 21 December 2005.

54. On 12 March and 27 September 2009 the applicant requested that the president of the trial court establish the whereabouts and the state of the car.

55. On 27 April 2009 the trial court ordered the return of the car to the applicant, together with the keys and his driving licence. The next day, it ordered AMSM-Customs Department ("the storage company"), the company which had been storing the car since 15 December 2005, to return it.

56. On 6 May 2009 the applicant requested that the storage company return the car to his possession. On 8 May 2009 the storage company notified him that it would return the car against payment of storage costs in the amount of 223,297 Macedonian denars (MKD) (equivalent to EUR 3,640). At the applicant's request, the storage company reduced the cost to MKD 148,780 (equivalent to EUR 2,430).

57. On 1 June 2009 the applicant requested to be exempted from paying the storage costs, arguing that he had applied, in vain, for the return of the

car soon after it had been seized. Furthermore, he submitted that the time that had elapsed before the adoption of the return order should be imputed to the authorities, since the trial court's decision of 2 December 2008 had been based on inaccurate evidence to the effect that the Ministry had *de facto* control of the car. Against this background, the applicant sought to have the State bear the storage costs. By letter of 7 July 2009 he reiterated his claim for exemption from the storage costs.

58. On 29 September 2009 the trial court dismissed the applicant's request for exemption from the storage costs. It also dismissed his request that the storage costs be reimbursed from the State's budget. It based its ruling on the fact that the applicant had been found guilty and convicted by a final judgment given in the criminal proceedings described above. In this connection it referred to an agreement dated 1999, on the basis of which the State had conferred on the storage company the right to store cars and other vehicles seized by the police or the courts. Under section 11 of the agreement, the owner of the car was normally obliged to pay the storage costs. However, it was for the court to decide, in the decision returning the vehicle to the owner, whether the storage costs were to be paid by the owner or the State.

59. On 3 December 2009 an appeal panel of the trial court dismissed the applicant's appeal. It confirmed that the storage costs should not be borne by the State, since the applicant had been convicted by the final court judgment of 14 September 2006. According to the introductory part of the decision, it had been adopted on the basis of section 92 of the Act, consolidated version (see paragraph 76 below).

60. On 1 June 2011 custody of the car was turned over to the agency set up under the Seized Property Management Act ("the Agency", see paragraph 66 below). As stated by the Government, the Agency does not charge for the management of temporarily seized vehicles.

C. Compensation proceedings for reimbursement of the storage costs

61. On 22 February 2010 the applicant submitted a civil action against the trial court and the respondent State, claiming compensation for pecuniary damage sustained from the confiscation and storage of the car, namely payment of the storage costs requested by the storage company, payment of the costs for repairs to the car and to make up for its reduced value. He argued that his criminal conviction had not entailed any responsibility on his part for the storage costs. On 5 March 2011 the Skopje Court of First Instance ordered the applicant to deposit MKD 30,000 (the equivalent of EUR 490) in security for the defendant's trial costs. On 17 November 2011 the Skopje Court of Appeal accepted the applicant's appeal and remitted the case for fresh examination. The proceedings are still pending before the first-instance court.

D. Other proceedings

1. Criminal proceedings against third parties

62. On 29 May 2009 the applicant brought criminal charges before the Thessaloniki (Greece) public prosecutor against three individuals, G.P., V.P. and G.K., all residents of Athens, Greece, for making false statements. According to the applicant, two of them were the same DEA agents whose identity had remained protected in the criminal proceedings against him in the respondent State. No information was provided as to the outcome of these proceedings.

63. On 12 May 2010 the applicant sought to have the Macedonian prosecuting authorities prosecute the same individuals for making false statements in the proceedings against him. On 25 August 2009 the public prosecutor notified the applicant that there were "no grounds for the public prosecutor's intervention", since the applicant had been convicted by a final judgment which had been based on oral and documentary evidence that corroborated his guilt. On 7 September 2009 the applicant, as a subsidiary prosecutor, submitted before the trial court private criminal charges against G.P., V.P. and G.K. No information was provided as to the outcome, if any, of these proceedings.

2. Extradition proceedings

64. By decisions of 14 September and 14 October 2009 respectively the trial and Supreme Courts dismissed a request for the applicant's extradition submitted by the Greek authorities. They found that the request concerned the same offences of which he had already been convicted by the Macedonian courts.

II. RELEVANT DOMESTIC LAW

A. The position at the material time

Criminal Proceedings Act as amended on 22 October 2004 ("the Act")

65. Under section 42 § 2(2) of the Act, as regards criminal offences subject to automatic prosecution by the State, the public prosecutor may order the use of a special investigative technique in pre-trial proceedings under the conditions and in the manner specified by law.

66. Section 88 of the Act specified as trial costs the following: costs related to witnesses, experts, and interpreters; travelling expenses of the accused; costs for securing the attendance of a detained person at trial; transportation costs incurred by officials; medical expenses for treatment of the accused; lump sum costs and legal fees.

67. Under section 91 of the Act, in a judgment in which a court finds an accused guilty of a crime, it may also state that he or she must cover the trial costs. This provision became section 92 in the 2005 consolidated version of the Act.

68. Section 142-b of the Act provides that special investigative techniques may be ordered where there are reasonable grounds for suspicion that certain criminal offences have been committed by an organised group. Secret surveillance, audio-visual recordings and the use of undercover agents (*лица со прикриен идентитет*) are among the special investigative techniques permitted (section 142-b §§ 1 (3) and (6)).

69. Section 142-c § 1 provides that information, documents and objects obtained by means of special investigative measures may be used as evidence in criminal proceedings.

70. Under section 142-d § 3, the use of special investigative techniques at the pre-trial stage may be ordered by an investigating judge in a reasoned written decision following a reasoned written request by the public prosecutor, or by the public prosecutor in a reasoned written decision following a reasoned written request by the Ministry, but only in respect of a person whose identity is unknown.

71. Under section 142-e § 4 of the Act, evidence obtained through special investigative techniques cannot be used at trial if the techniques were applied without an order by the investigating judge or the public prosecutor or contrary to the Act.

72. Section 142-f §§ 2 and 3 of the Act provide that the Ministry shall prepare a report after the expiry of the period during which a special investigative technique was used, and shall submit it to the public prosecutor if the order for the technique was issued by the latter.

73. Under section 270-a of the Act the public prosecutor, investigating judge or trial judge must take measures to ensure the effective protection of witnesses if there is a risk that they may be threatened or that their life, health or physical integrity may be endangered. Their protection is to be guaranteed by means of special arrangements for the examination of the witnesses and their participation in the proceedings. Protected witnesses are examined in the presence of the public prosecutor, the investigating judge or the trial judge, in a location which guarantees the protection of their identity, unless they agree to be examined using special streaming media, for which a court order is needed. An unsigned copy of the witness's statement is forwarded to the accused and his or her representative, who can put questions in writing through the court.

74. Under section 392 § 1 (7) of the Act, a case may be reopened if the European Court of Human Rights has given a final judgment finding a violation of the human rights or freedoms. The same provision is provided for in section 449 (6) of the new Criminal Proceedings Act, which entered into force in 2010 and would become applicable after 1 December 2013.

B. Subsequent developments

1. Criminal Proceedings Act as amended in 2008 (Official Gazette no. 83/2008)

75. Under section 270-b of the Act, special arrangements may be made for the examination of a protected witness, which may involve concealment of his or her identity and face. If arrangements concern the witness's personal information, he or she may produce evidence under a pseudonym (*псевдоним*). The general rules for examination of witnesses apply as regards the remainder. A witness who is examined under a pseudonym may also have his or her face concealed (*прикривање на изгледот*) with the use of special streaming media which distort one's voice and face. The protected witness shall be placed in a special room that is physically separated from the courtroom in which the investigating or trial judge, as well as other persons attending the examination, are present.

76. Under section 339 (3) of the Act the judgment cannot be based solely on evidence given by a protected witness and obtained by means of witness protection.

2. Seized Property Management Act 2008 (Закон за управување со конфискуван имот, имотна корист и одземени предмети во кривична и прекршочна постапка) *(Official Gazette 98/2008)*

77. The Act provides for the establishment of the Seized Property Management Agency, which manages assets seized temporarily or on the basis of a final court order. It performs a variety of functions related to the management of seized property. Under section 32 of the Act, costs related to the management of real property are reimbursed from the State's budget. The same rules apply with respect to the management, sale and destruction of drugs (section 54). There is no provision as regards the reimbursement of costs related to storage of movable assets.

THE LAW

I. ALLEGED VIOLATIONS UNDER ARTICLE 6 OF THE CONVENTION

78. The applicant raised numerous complaints under Article 6 of the Convention about the criminal proceedings against him. He complained that there had been a violation of his defence rights regarding the examination of the undercover witness, that the judges had been biased, had not given reasons for their decisions and had rejected his requests for the admission of

evidence. He further alleged that his conviction had been based on inadmissible evidence obtained by using special investigative techniques and that the witness whose statement had served as the main evidence against him had been involved in the operation as an *agent provocateur*. He complained also that the documents in the case file had not been translated into a language that he understood. The Court considers that these complaints should be analysed under Article 6 §§ 1 and 3 of the Convention, the latter concerning particular aspects of the right to a fair trial guaranteed by Article 6 § 1, which, in so far, as relevant, read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (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;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

79. The Government did not raise any objection as to the admissibility of these complaints.

80. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged violation of the applicant's defence rights regarding the examination of the undercover witness

81. The Court will first examine the applicant's allegation that his defence rights regarding the examination of the undercover witness were restricted to an extent that was incompatible with the requirements of Article 6 of the Convention.

(a) The parties' submissions

82. The applicant argued that he had been denied the right to put questions to the undercover witness who had given evidence at the hearing of 21 June 2006, either directly or in writing. The witness's examination had taken place in extremely improvised conditions. The applicant had repeatedly requested to be given the opportunity to confront that witness. The trial court, however, had not secured that witness's attendance, despite the order issued to that effect. Given the number of accused and their lawyers, the involvement of undercover witnesses, who produced evidence with the assistance of court interpreters, it had been impossible to put questions to the undercover witness in writing within the one-hour time-limit set by the trial court. The applicant's requests for extension of that time-limit had been to no avail. The higher courts had not addressed his complaints regarding the examination of the undercover witness.

83. The Government submitted that the concealment of the identity of the undercover agent who had given oral evidence at the trial had been justified in view of the respondent State's struggle against organised crime. It was not disputed that the undercover witness had been an agent employed in the DEA's Athens office. He had also been authorised by the Macedonian public prosecutor to be used in the operation against the applicant. The applicant had not contested, either in the domestic proceedings or in the proceedings before the Court, the need for protection of the identity of this witness. Even if his identity had been disclosed or he had been examined under the general rules for examination of witnesses it would not have added anything to the process of establishing the facts. In this connection, they submitted that the applicant's conviction had been based neither solely nor to a decisive extent on the evidence produced by this witness. The admissibility of that evidence had been confirmed by the domestic courts, which had ruled on the basis of the principle of free assessment of evidence (*правило на слободна оценка на доказите*). They had analysed the available evidence carefully and had provided sufficient reasons for having regarded the evidence produced by the undercover witness as credible. The trial judge had known the identity of that witness; she had established that the witness had been involved in the events recorded on the video material; she had followed his behaviour during examination and drawn conclusions about his reliability. That the applicant and his lawyers had not attended the oral examination of this witness had been in compliance with the applicable rules at the relevant time. Live streaming media, with the possibility for face and voice distortion, had become available later. The public prosecutor, although present at the oral examination, had not put any questions to this witness, as evident from the relevant court record. Furthermore, the witness had been warned about the legal consequences of false testimony.

84. The Government further submitted that the applicant had not contested the way in which this witness had been examined. His concerns

related to the alleged inconsistency in the evidence produced by the undercover agents had ultimately been rendered groundless by the withdrawal of the evidence given by the witness examined in the pre-trial proceedings. The fact that the applicant had been informed of the accusations against him, had been represented by two Macedonian lawyers and had had access to all available evidence in the case file, supported the Government's contention that he had had adequate time to prepare his defence.

85. The applicant had refused to put questions to the undercover witness in writing, despite the fact that the trial court had invited him to do so. That he had formulated five questions (see paragraph 28 above), which the trial court had refused to allow, was insufficient to conclude that the applicant and his lawyers had had a genuine intention to question the witness. Lastly, the applicant had been given the opportunity to present his case and to comment on all evidence against him, including the evidence produced by the undercover witness.

(b) The Court's assessment

86. As the Court has consistently underlined, the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. In addition, all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence; as a general rule, Article 6 §§ 1 and 3 (d) require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see *Van Mechelen and Others v. the Netherlands*, 23 April 1997, §§ 50 and 51, *Reports of Judgments and Decisions* 1997-III).

87. Turning to the present case, the Court notes that two witnesses who had been involved as undercover agents in the operation that led to the applicant's arrest and conviction were examined in the impugned proceedings: the first witness, who was examined in the pre-trial proceedings (see paragraph 11 above), and the second, who was examined at the trial hearing on 21 June 2006 (see paragraph 24 above). The evidence given by the first undercover agent was subsequently withdrawn by the public prosecutor (see paragraph 34 above) and was not used in court. Indeed, the domestic courts did not rely on this evidence in finding the applicant's guilt. The Court will therefore focus its examination only on the evidence given by the second undercover agent at the trial.

88. As to whether the evidence given by this witness, who was an agent of the DEA's Athens office, was the sole or decisive evidence against the applicant (as to the meaning of "sole" and "decisive" in the context, see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 131, ECHR 2011), the Court observes that the prosecution relied on a range of documentary evidence in order to persuade the trial court of the applicant's guilt (see paragraph 13 above). Apart from the evidence set out in the indictment, the trial court further admitted in evidence the detailed list of incoming calls on the mobile phones confiscated from the accused (see paragraph 16 above) and the oral evidence produced by the available co-accused (see paragraph 18 above). The Court is accordingly satisfied, like the Supreme Court (see paragraph 49 above), that the evidence produced by the undercover witness examined at the trial was not the sole evidence. However, on the question of the decisive nature of this evidence, the Court observes that the trial court analysed it in detail and relied on it in order to establish the time, place and way in which the offence had been committed (see paragraph 36 above). In the absence of a soundtrack to accompany the video material, his testimony was the only evidence concerning the substance of the discussions during the critical meeting in the cafe bar in Skopje. This was confirmed in the Court of Appeal's judgment (see paragraph 44 above). There was no other evidence corroborating the applicant's involvement in the crime. In this connection, it is noteworthy that the trial court relied on the evidence given by this witness in order to refute the evidence of the applicant's co-accused, who had denied that their relationships and meetings with the applicant had been drugs-related (see paragraphs 39 and 40 above). In such circumstances, the Court considers that this evidence was decisive for the applicant's conviction.

89. The Court further notes that the witness was examined under section 270-a of the Act (see paragraphs 24 and 73 above). The Court of Appeal confirmed that in its judgment of 16 February 2007 (see paragraph 45 above). That provision concerned protected witnesses and required special examination arrangements, which, in the present case, involved full protection of the witness's anonymity and impossibility of the defence to attend his examination.

90. As to the first arrangement, it is not in doubt that the witness's identity remained undisclosed to the defence, as his personal details and address were withheld from the applicant and his legal representatives. Since he testified in English, interpretation into Macedonian was also provided. An unsigned copy of his statement was communicated to the applicant, as required under section 270-a of the Act. Despite the protection of the witness's identity, the Court does not consider that he was to be regarded anonymous within the meaning of the Court's case-law (see, *Al-Khawaja and Tahery*, cited above; *Kostovski v. the Netherlands*,

20 November 1989, Series A no. 166; and *Ellis and Simms v. the United Kingdom* (dec.), no. 46099/06, 10 April 2012). The witness was a sworn police officer whose function was known to the public prosecutor. Moreover, the applicant knew the said agent, if not by his real identity, at least by his physical appearance, as a result of having met him at least once at the critical meeting on 10 November 2005 in the cafe bar in Skopje (see paragraphs 9 and 19 above) (see *Lüdi v. Switzerland*, 15 June 1992, § 49, Series A no. 238).

91. As regards the second arrangement, it is also not disputed that the witness was examined only in the presence of the trial judge and the public prosecutor. The applicant and his lawyers did not attend the examination, which took place in a special room separated from the courtroom. That was in accordance with the then applicable rules, which, contrary to statutory provisions now in force (see paragraph 74 above), did not provide for such opportunity when no streaming media were used. Furthermore, the available material in the case-file does not suggest that any attempt was made in order to allow the defence to view the witness's examination via streaming media, despite the fact that section 270-a of the Act provided for such an opportunity. The applicant and his legal representatives could not therefore see and hear the witness giving evidence in court. Consequently, they were not able to observe his demeanour in order to make their own assessment of the veracity of the account being given by him (see, *a contrario*, *Ellis and Simms*, § 82). That the trial judge had herself ascertained that the witness had been involved in the events recorded on the video material and had stated her opinion of the witness's credibility (see paragraph 82 above) cannot be considered a proper substitute for the opportunity for the defence to question the witness in their presence and make their own judgment as to his demeanour and reliability (see *Van Mechelen*, cited above, § 62).

92. Furthermore, the applicant and his legal representatives were not allowed at any time during the proceedings to confront the witness and question him directly, despite the fact that they undoubtedly desired to do so. The Court recalls that the need for confrontation is all the greater when evidence, which in certain respects amounts to hearsay (see paragraph 38 above), as in the present case, is decisive against the defendant (see *Al-Khawaja and Tahery*, cited above, § 142). The authorities' efforts to secure the attendance of the witness and to establish a communication link with him were to no avail (see paragraphs 31 and 32 above). Those efforts show that there were no legal obstacles to contrast the applicant's arguments with the evidence given by the witness by using less far-reaching measures than those applied during the witness's examination, which would have taken into account the legitimate interest of the police authorities in a drug trafficking case in preserving the anonymity of their agent so that they could protect him and also make use of him again in the future.

93. Lastly, the Court will comment on the opportunity given to the applicant and his lawyers to submit written questions to the witness indirectly through the trial court immediately after the witness's examination of 21 June 2006.

94. As stated in the court record of that date, the witness's examination ended at 12 am. Immediately after, the trial court gave an hour to all accused and their lawyers to read the transcript of the witness's statement, to consult and prepare questions. The parties submitted instead their arguments that the time allowed for that exercise had not been adequate. Furthermore, the court ordered, on the applicant's request, that the witness's statement was translated into Serbian, the language of which he had sufficient command. Those discussions, the translation of the witness's statement and the court's deliberations lasted until 3,10 pm., when the trial court fixed a one-hour time-limit for all accused to prepare questions to be put to the witness in writing. None of the accused submitted any question to the witness. Given the circumstances of the case, the Court does not consider that the one-hour time-limit set by the court was adequate, i.e. that it was such as to enable the applicant to familiarise himself properly with and to assess adequately the evidence produced by the witness and to develop a viable legal strategy for his defence (see, *mutatis mutandis*, *Galstyan v. Armenia*, no. 26986/03, § 87, 15 November 2007). In the Court's view, it placed the applicant in a position where he was effectively deprived of a real chance of challenging the reliability of the decisive evidence against him (see paragraph 88 above). That the witness had limited leave to remain in the respondent State and that any extension of the time for preparing written questions would prolong the proceedings (see paragraph 45 above) cannot justify the serious limitations of the applicant's defence rights. In this connection, the Court recalls that the right to the fair administration of justice holds so prominent a place in a democratic society that it cannot be sacrificed to expediency (see *Kostovski*, cited above, § 44).

95. The Court therefore concludes that there were neither adequate counterbalancing factors nor strong procedural safeguards to permit a fair and proper assessment of the reliability of the evidence produced by the undercover witness (see *Al-Khawaja and Tahery*, cited above, § 147 and *Ellis and Simms*, cited above, § 78). In the circumstances of the case, the constraints affecting the applicant's exercise of his defence rights were irreconcilable with the fair trial guarantees. There was accordingly a violation of Article 6 §§ 1 and 3 (d) of the Convention.

2. Remaining complaints

96. Having regard to the above findings, the Court does not consider it necessary to rule on the applicant's remaining complaints under Article 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

97. The applicant complained that the car's seizure had been unlawful and unjustified and that his rights under Article 1 of Protocol No. 1 to the Convention had been violated by the court's decision ordering him to pay the storage costs. He relied on Article 1 of Protocol No. 1 of the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

98. The Government submitted that the applicant's complaint under this head was premature, as the compensation proceedings (see paragraph 61 above) had not yet ended. According to the Government, there was no reason to doubt the effectiveness of those proceedings.

99. The applicant contested the Government's arguments. He stated that the compensation proceedings could not be regarded as effective because their outcome remained unforeseeable, although two years had lapsed after he had introduced his claim. In this connection he invited the Court "to examine the substance of his claim, to order his exemption from paying the storage costs and to award him compensation for the car".

B. The Court's assessment

100. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial organ to first use the remedies provided by the national legal system (see *Aksoy v. Turkey*, 18 December 1996, § 51, *Reports* 1996-VI). The rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention. This is an important aspect of the subsidiary nature of the Convention machinery (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

101. Applicants are only obliged to exhaust domestic remedies that are effective and capable of redressing the alleged violation. More specifically,

the only remedies which Article 35 § 1 of the Convention requires to be exhausted are those that relate to the breaches alleged and which are, at the same time, available and sufficient (see *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)).

102. In the instant case, the Court notes that the compensation proceedings, which are still pending, concern the applicant's claim against the respondent State for monetary compensation for the confiscation of the car, namely payment of the storage costs, costs for repairs to the car and to make up for its reduced value. Obviously, the applicant's goal in bringing that claim is to obtain a judicial declaration affording him redress for the alleged breach of his property rights. Consequently, it is essentially the same as his complaint under Article 1 of Protocol No. 1 submitted before the Court. That the applicant used this remedy suggests that he considered this avenue of redress as offering reasonable prospects of success. The applicant's argument about the unforeseeability of the outcome of these proceedings in view of their length (see paragraph 99 above) is irrelevant for the effectiveness of this remedy. No other argument casting doubt on the effectiveness of this avenue of redress has been put forward. In view of the fact that it is in the interests of the applicant, and the efficacy of the Convention system, that the domestic authorities, who are best placed to do so, act to put right any alleged breaches of the Convention (see, *mutatis mutandis*, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 164, ECHR 2009), the Court considers that the applicant's complaint under this head is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

103. As regards the criminal proceedings against him, the applicant relied on Articles 3, 5 § 1, 8 and 13 of the Convention.

104. He also complained that the length of the proceedings described under sub-sections B. and C. above (see paragraphs 51-61 above) had been excessive.

105. Lastly, he complained under Article 6 of the Convention and Article 4 of Protocol No. 7 regarding the request for his extradition from the former Yugoslav Republic of Macedonia to Greece.

106. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

107. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. Article 41 of the Convention provides:

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

A. Damage

109. Regarding his Article 6 complaints, the applicant claimed, in respect of pecuniary damage, EUR 600,000 for loss of income sustained as a result of his imprisonment and EUR 45,000 for commercial goods that the respondent State had confiscated from him. As regards his complaint under Article 1 of Protocol No. 1 to the Convention, he claimed EUR 18,000 in respect of pecuniary damage, as compensation for the car seized from him. He further claimed EUR 300,000 in respect of non-pecuniary damage for family difficulties encountered as a result of his conviction, psychological stress suffered during his detention and imprisonment and loss of reputation.

110. The Government contested these claims as unsubstantiated and excessive. They further claimed that there was no causal link between the damage and the alleged violations.

111. The Court considers that the basis for an award of just satisfaction in the present case must be the violation of the applicant's defence rights under Article 6 of the Convention regarding the evidence given by the undercover agent examined at the trial. It further observes that the applicant's claims for just satisfaction under this head are related to the outcome of the criminal proceedings against him and the alleged consequences of his conviction. In this connection, the Court notes that it cannot speculate as to what the outcome of the impugned criminal proceedings against the applicant would have been had there been no violation on this ground (see, *mutatis mutandis*, *Schmautzer v. Austria*, 23 October 1995, § 44, Series A no. 328-A, and *Demerdžieva and Others v. the former Yugoslav Republic of Macedonia*, no. 19315/06, § 33, 10 June 2010). It therefore finds no causal link between the damage claimed and its finding of a violation of Article 6. Accordingly, the Court makes no award under this head.

B. Costs and expenses

112. The applicant further claimed EUR 10,000 for costs and expenses incurred before the trial and appellate courts in the criminal proceedings against him. Without further specification, he also claimed EUR 5,000 for costs and expenses incurred in the remaining domestic proceedings and for those incurred before the Court. No supporting documentation was submitted in respect of these claims.

113. The Government contested these claims as unsubstantiated and excessive.

114. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, the Court considers that certain costs and expenses in the domestic proceedings were undoubtedly expended with a view to limiting the effects of the violation found by the Court. However, in the absence of any supporting documents, the Court finds it difficult to assess which costs were incurred in order to seek prevention or redress before the national courts of the violation found. The same consideration applies to the applicant's claim for reimbursement of the costs incurred in the proceedings before it. It therefore rejects the applicant's claims under all heads (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 of the Convention concerning the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention in respect of the applicant's defence rights regarding the examination of the undercover witness heard at the hearing of 21 June 2006;

3. *Holds* that it is not necessary to examine separately the applicant's other complaints under Article 6 of the Convention concerning the criminal proceedings against him;

4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President