

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

THIRD SECTION

CASE OF MAKOVAC AND LATIN v. SLOVENIA

(Applications nos. 15525/23 and 15532/23)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (b) and (d) • Lack of an oral hearing and alleged unfairness of proceedings in which the applicants were found guilty of minor offences related to their fishing activities in the area of Bay of Piran • No violation of Art 6 §§ 1 and 3 (b) and (d) (first applicant) • Justified dispensation with an oral hearing and with taking witness evidence for ascertaining first applicant's guilt • Violation of Art 6 §§ 1 and 3 (b) (second applicant) • Second applicant's guilt could not be properly determined without assessing the evidence at an oral hearing • Authorities' failure to specify and/or notify the second applicant in a timely manner of evidence against him

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 October 2026

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Makovac and Latin v. Slovenia,

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

Ioannis Ktistakis*, President*,
Peeter Roosma,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Canòlic Mingorance Cairat*, judges*,
Vesna Bergant Rakočević*,* ad hoc *judge*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 15525/23 and 15532/23) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Croatian nationals, Ms Franka Makovac and Mr Michael Latin ("the applicants"), on 6 April 2023;

the decision to give notice to the Slovenian Government ("the Government") of the complaints under Article 6 §§ 1 and 3 of the Convention concerning the applicants' right (i) to be informed of the evidence on which their charges and ensuing convictions were based and their ability to effectively mount a defence, (ii) to have their case examined at an oral hearing and (iii) to examine witnesses against them and witnesses on their behalf, and to declare inadmissible the remainder of the applications;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the Croatian Government, who exercised their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court;

the decision by the Chamber to exempt Vasilka Sancin, the judge elected in respect of Slovenia, as well as Aleš Galič, the *ad hoc* judge appointed from a list submitted in advance by the Government (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), from sitting in the above-mentioned cases (Rule 28 § 3 of the Rules of Court);

the decision of the President of the Chamber to subsequently appoint Vesna Bergant Rakočević to sit as an *ad hoc* judge in the above-mentioned cases (Article 26 § 4 of the Convention and Rule 29 § 1 (b) of the Rules of Court);

Having deliberated in private on 1 September 2026,

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

INTRODUCTION

1. The two applications, which belong to a group of over 800 applications against Slovenia, concern the lack of a hearing and alleged unfairness of minor-offence proceedings in which the applicants, both Croatian nationals, were found guilty by the Slovenian authorities of minor offences related to their fishing activities.

THE FACTS

2. Ms Franka Makovac (hereinafter "the first applicant") was born in 1974. Mr Michael Latin (hereinafter "the second applicant") was born in 1985. They both live in Savudrija (Croatia) and were represented by Mr R. Travaš, an attorney-at-law at Travaš and Partners, a law firm based in Zagreb.

3. The Government were represented by their Agent, Ms A. Grum, Senior State Attorney.

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

I. BACKGROUND TO THE DOMESTIC PROCEEDINGS AT ISSUE IN THE APPLICATIONS

5. The applicants, commercial fishing workers from Croatia, often fished in the area of Bay of Piran (hereinafter "the area of concern"), which was defined as belonging to Slovenia by the Final Award of 29 June 2017 delivered by the Arbitral Tribunal at the Permanent Court of Arbitration in The Hague (hereinafter "the Arbitration Award"). Further details concerning the background to the dispute leading to the Arbitration Award and subsequent developments in that regard are set out in *Chelleri and Others v. Croatia* (dec.), no. 49358/22, §§ 5 to 28, 16 April 2024.

6. The applicants, like other Croatian fishing workers operating in the area of concern, were repeatedly fined by the Slovenian authorities for offences related to their alleged presence in Slovenian waters. The first applicant has lodged over 100 further applications with the Court and the second applicant has lodged one additional application regarding similar proceedings in which they were fined for their fishing activities in the area of concern.

II. ISSUANCE OF PAYMENT ORDERS BY THE MINOR-OFFENCE AUTHORITIES IN SUMMARY PROCEEDINGS

7. The proceedings against the applicants were conducted under section 57(1) and (4) of the Minor Offences Act, which governs the issuance of a fine by means of a payment order (*plačilni nalog*) in cases where the

minor-offence authority either observes the offence in person or establishes it through the use of appropriate technical means or devices, and the payment order cannot be served on the offender directly at the scene. In such situations, the offender is served by post with the payment order, accompanied by a brief description of the factual circumstances of the offence and an indication of the evidence (see paragraph 44 below).

A. The first applicant

8. On 25 March 2018 the Koper maritime police issued the first applicant with a payment order, imposing a fine of 500 euros (EUR) for the minor offence of unlawful border crossing. The payment order was served on her by post, together with a letter containing a brief description of the facts and a list of evidence. The following evidence was noted: "the personal observation of the police officer [B.K.] and a video-recording/photographs/radar images."

9. The description of the factual circumstances of the offence, which was enclosed with the payment order, stated as follows. At 7.35 a.m. on 25 March 2018 the first applicant, operating a Croatian-registered fishing vessel marked 373-UM and accompanied by a Croatian police vessel, entered into Slovenian territorial waters and began raising fishing nets. Upon crossing the border, the first applicant failed to take the shortest route possible to the international border crossing point to undergo a border check. She ignored the signal, and the Croatian police vessel accompanying her vessel prevented the Slovenian authorities from carrying out the relevant identification and minor-offence procedures. Using a megaphone, the police announced the detection of a minor offence and ordered the first applicant to stop her vessel. She and her vessel subsequently left Slovenian territorial waters. The events were documented by technical means.

B. The second applicant

10. On 19 February 2020 the Inspectorate for Agriculture, Forestry, Hunting and Fisheries (hereinafter "the Fisheries Inspectorate") issued the second applicant with a payment order, imposing a cumulative fine of EUR 840 for two minor offences. According to the payment order, at 10 a.m. on 22 November 2019 the second applicant had engaged in commercial fishing activities and obstructed a fisheries inspector by failing to stop his vessel in Slovenian waters. Secondly, he was found to have engaged in commercial fishing activities with set nets that he had laid in the sea without holding a suitable permit to fish in Slovenian waters. The payment order was served on the second applicant by post, together with a letter containing a brief description of the factual circumstances of the offence and a list of evidence. The following evidence was noted: "direct observations of the inspector and photographs."

11. The description of the factual circumstances of the offence, which was enclosed with the payment order, stated as follows. On the morning in question, the fisheries inspector, R.S., arrived at the position of a Croatian-registered fishing vessel marked 49-UM. From approximately 5 metres away, the inspector observed the second applicant engaging in commercial fishing activities with set nets. The inspector directly identified the second applicant, whose identity was also established on the basis of photographs and social media posts. Using a megaphone, the inspector ordered the second applicant to stop his vessel. However, he ignored the order and a Croatian police vessel accompanying his vessel prevented the Slovenian authorities from carrying out the relevant inspection and minor-offence procedures. He subsequently fled with his catch from Slovenian waters into Croatian waters. Cooperation between Croatian fishing workers and the Croatian police was evidenced by articles published in the Croatian media. Although the second applicant held a fishing permit from the Republic of Croatia, he had not obtained the required permit from the Republic of Slovenia.

III. THE APPLICANTS' REQUESTS FOR JUDICIAL PROTECTION

12. The applicants were assisted by the Slovenian law firm Kozinc and Partners, who were representing a large number of Croatian fishing workers in similar proceedings (see also paragraph 39 and 40 below). Prior to lodging their requests for judicial protection, neither the applicants nor their legal representative requested access to the minor-offence case file.

13. On 6 April 2018 the first applicant, represented by the law firm (see paragraph 12 above), filed a request for judicial protection against the payment order.

14. As regards her identification, her request stated, *inter alia*, as follows:

> "In view of the facts as stated in the description of the factual circumstances in the challenged act, the officials were unable to complete the police procedure, meaning they could not fully carry it out, as the appellant did not respond to the police orders to stop the vessel. As a result, in this specific case, there was no inspection of the vessel's documents and logbooks, nor of the documents of the crew members and passengers, even though this is required by section 107[(1)] of the Police Tasks and Powers Act. This legal provision does not state that police officers may inspect these documents, but rather that they must do so.
>
> ...
>
> Thus, given the [above] stated, the [challenged payment order] is based on an improperly or incompletely conducted procedure, making it incorrect and unlawful. Owing to these procedural errors, the facts of the case were also incorrectly established, as there was no identification of the passengers or crew members of the vessel marked 373-UM, nor was a document inspection carried out ... As stated below, the appellant has been fishing in the specified area for several years and was indeed at sea on the disputed day. However, she is not certain whether she was on the vessel at the time of the alleged offence. Therefore, the appellant proposes that a review of the

video-recordings and photographs of the incident in the possession of the minor-offence authority be conducted.

...

Given that the appellant was not identified during the minor-offence procedure by the minor-offence authority and that she is uncertain whether she was on vessel ... 373-UM at the time of the alleged offence, for the sake of simplicity she submits her statements below under the assumption that she is the perpetrator of the offence."

15. As regards the circumstances of the alleged minor offence, her request stated, *inter alia*, as follows:

"The presence of the Croatian police vessel assured the appellant that she was within its territory and that no border had been crossed. Therefore, the appellant saw no need or obligation to undergo a border check or take any other action when crossing the border.

...

By positioning [themselves] between the appellant's fishing vessel and the Slovenian police vessel, the Croatian police showed the appellant that sovereignty and jurisdiction over the area belonged to the Republic of Croatia. The appellant later 'left' the waters which, according to the [challenged payment order], belong to the Republic of Slovenia, under the escort of the Croatian police. The actions of the Croatian police and the general conduct of the authorities of both countries can also be confirmed by other fishing workers – D.M., E.K., G.V. and several others – who have recently found themselves in exactly the same situation."

To this end, the first applicant also requested that B.K. (the police officer who identified her) and a Croatian police officer, D.L., be heard.

16. Her request also asserted that her actions had been based on an incorrect understanding of the facts and stated as follows:

"The appellant acted under a mistake of fact, as she was convinced that she had never left the waters of the Republic of Croatia. Because of this misunderstanding, she saw no need to undergo a border check at the international crossing for international maritime traffic."

17. On 16 July 2020 the second applicant, represented by the same law firm (see paragraph 12 above), filed a request for judicial protection against the payment order.

18. As regards his identification, his request stated, *inter alia*, as follows:

"... 'personal recognition' is the personal observation of the inspector and therefore cannot serve as proof that the perpetrator of the alleged offences is indeed the appellant. ... Furthermore, the photographs were not attached to the payment order, and regarding social media, it is unclear which social media platforms the minor-offence authority has in mind ...

To this end, the second applicant proposes an inspection of the video and photographs relating to the minor offence ...

...

... the appellant's identification during the inspection ... and minor-offence procedure[s] by the official was not carried out in an appropriate manner.

...

He has been fishing for a long time in the area where, according to the minor-offence authority, he was allegedly fishing at the time of the inspection and determination of the alleged offence ..."

19. As regards the circumstances of the alleged minor offences, his request stated, *inter alia*, as follows:

"By continuously escorting the appellant's fishing vessel and preventing the Slovenian authorities from boarding his boat and conducting procedures, the Croatian police signalled to the appellant that sovereignty and jurisdiction over the area belonged to the Republic of Croatia. The actions of the Croatian police and the general conduct of the authorities of both countries can also be confirmed by other fishing workers – F.M. [the first applicant], E.K., D.M. and several others – who have recently found themselves in exactly the same situation."

To this end, the second applicant also asked that R.S. (the fisheries inspector) and a Croatian police officer, E.M., be heard.

20. His request also asserted that his actions had been based on an incorrect understanding of the facts and stated as follows:

"The appellant acted under a mistake of fact, as he was convinced that he was in Croatian waters and had never left them. Due to this mistaken belief, he saw no need to obtain a special fishing permit. Furthermore, he was certain that the minor-offence or inspection authority was not entitled to conduct official procedures in the specified area."

21. The second applicant further claimed that the inspector had not even tried to carry out an inspection procedure, as he had not approached his vessel. Furthermore, the applicant argued that in any event the obstruction or hindrance to the procedure could not be attributed to him, but rather to the Croatian police, that is, the official authorities of the Republic of Croatia. To support his claims, he referred to the evidence already proposed (see paragraph 15 above).

22. In their requests for judicial protection, both applicants argued that they should not bear the negative consequences of the unresolved dispute between Slovenia and Croatia. They had been acting in accordance with the assurances provided by their government to the effect that they could continue their activities under unchanged conditions even after the Arbitration Award, with an armed police escort for their safety. Lastly, they pointed out that the maritime border was defined differently in the Slovenian and Croatian legal systems, and that they were not familiar with the former.

IV. PROCEEDINGS BEFORE THE KOPER LOCAL COURT CONCERNING BOTH APPLICANTS

23. The complete minor-offence case files and the applicants' requests for judicial protection were transferred to the Koper Local Court (hereinafter "the Local Court").

24. As regards the first applicant, in addition to the payment order and description of the factual circumstances of the offence (see paragraph 8 above), the case file contained an official note stating that police officer B.K. had identified her by accessing the public vessel database (*Javni pretraživač plovila*) and police records (*LISK*), as well as through "published articles" (*prispevkov*), her personal appearance and "previous proceedings" against her. It also contained photographs showing two recognisable individuals – who appear to be a man and a woman – on vessel 373-UM, video-recordings of the confrontation involving the Slovenian police and radar images.

25. As regards the second applicant, in addition to the payment order and description of the factual circumstances of the offence (see paragraph 10 above), the case file contained a response from the relevant Croatian authority stating that the second applicant was the owner of vessel 49-UM. The file also contained an official note stating, among other things, that D.L. was actually its owner, while the second applicant was its operator. Additionally, it included photographs showing the vessel, although no individuals were visible in them.

26. The Local Court dismissed both requests for judicial protection without holding an oral hearing. It held that no procedural rules had been violated when establishing the identity of the perpetrators, and that personal recognition by a public official was a valid means of proving a perpetrator's identity. It also held that the first applicant's identity had been established by additional methods (*pomožnih metod*), that is, by viewing "official records and other databases". It pointed out that the applicants had had access to the material evidence in their respective case files and should have been aware of the Arbitration Award, which established the maritime border between Slovenia and Croatia in Bay of Piran. It also emphasised that the fishing vessels were fitted with equipment displaying geographical coordinates, and that the second applicant had been repeatedly involved in similar incidents.

27. As regards the first applicant, the Local Court found that she did not deny that she had been on the identified vessel at the relevant time, and that if she had had any doubts about the police's conclusions, she could have inspected the video footage and photographs in the possession of the minor-offence authority. In view of this, the Local Court rejected her request to review the evidence, determining that she had not provided a sufficient basis for her argument. In its judgment against the first applicant, the Local Court emphasised that, when entering Slovenia at the external border, foreigners were required to undergo a border check, which she had failed to do.

28. As regards the second applicant, the Local Court found that he did not deny that he had been on the identified vessel at the relevant time, nor had he proposed any evidence to the contrary to undermine the conclusions of the minor-offence authority. It also stated that it did not doubt the accuracy of his identification by the authorised official on the basis of personal recognition,

especially given the availability of photographs showing the event in question and the offender involved. The Local Court held that the photographs formed part of the minor-offence case file, which the second applicant could have inspected. It further held that he did not dispute that the minor offences had been committed with vessel 49-UM, of which he was the owner and operator. The Local Court held that the establishment of the statutory requirements for the offences in question was linked to the operator of the vessel, and that the second applicant had not proven that he was not the operator of the vessel with which fishing had been carried out without a special permit from the Republic of Slovenia. It further referred to the applicable legal provisions, under which the operator of a vessel should facilitate safe access to it, ensure the safety of officials and not obstruct, intimidate or interfere with officials in the performance of their duties. The Local Court found, in this connection, that the second applicant had not responded to the official and had not allowed him safe access to vessel 49-UM, thereby endangering safety and obstructing his work.

29. The Local Court found that the minor offences had been committed in an area where the border between Croatia and Slovenia had been disputed for a long time, but where the border had finally been determined with the Arbitration Award, which had been implemented since 30 December 2017, following the six-month transitional period. During that period, the Republic of Slovenia had widely published information on the new delimitation of the boundary between the Slovenian and Croatian territorial seas. In the court's view, therefore, the applicants could not claim to have been unaware of the changed regime in the disputed border area.

30. The Local Court rejected the applicants' requests to examine evidence (see paragraphs 14, 15, 18 and 19 above), finding this to be unnecessary as the relevant facts were not disputed by them. As regards both applicants' requests to hear witnesses, it found that the question whether the applicants had been accompanied by the Croatian police was not disputed and would not in any way change the outcome of the proceedings.

V. APPEAL PROCEEDINGS BEFORE THE KOPER HIGHER COURT CONCERNING BOTH APPLICANTS

31. The applicants appealed against the above-mentioned judgments, alleging that the Local Court had violated the provisions of the Minor Offences Act by (i) not examining the evidence proposed at the main hearing, (ii) not giving them the opportunity to comment on all the evidence against them and (iii) refusing to hear them in person. The applicants alleged that they had only learned of the manner and evidence used to establish their identities when the judgments had been issued. Specifically, the first applicant's identity had been established on the basis of official records, other databases and personal identification, while the second applicant's identity

had been established on the basis of the vessel's ownership. The applicants therefore claimed that they had been unaware of the material on which the Local Court's judgments had been based and had been unable to comment on it. The first applicant also argued that the court's reference to "official records and other databases" (see paragraph 26 above) had not been specific and that she could not therefore comment on it effectively.

32. The second applicant reiterated his assertion that he had not prevented the fisheries inspector from accessing his boat, but that this had been done by a Croatian police vessel (see paragraph 19 above). These circumstances could have been established by the Local Court if it had viewed the video-recordings made by the minor-offence authority and examined the proposed witnesses. He alleged that, as a result of this, his right to an effective legal remedy had been breached. He also stated that it was not clear from the case file that he had lacked the required fishing permit, and that the Local Court had failed to examine evidence in this regard. In addition, he argued that the court should have instructed him to inspect the minor-offence case file in accordance with section 65(5) of the Minor Offences Act (see paragraph 47 below), as its judgment had been based on facts of which he had been unaware.

33. The applicants also reiterated their argument that, given the explicit assurances from their own State and the presence of the Croatian police vessels, they could not reasonably have been expected to know that they were not fishing in Croatian territorial waters. They maintained that their actions had been based on an incorrect understanding of the facts (see paragraphs 16 and 20 above) and that they definitely had not acted with intent.

34. On 15 April and 13 May 2021 respectively the Koper Higher Court (hereinafter "the Higher Court") dismissed both applicants' appeals. It explained that they had been found liable for minor offences in summary proceedings conducted by the minor-offence authorities. Both payment orders were, in accordance with the Minor Offences Act, subject to judicial review on the grounds referred to in the applicants' requests for judicial protection. The court clarified that a judicial review of a minor-offence decision conducted of its own motion was limited solely to certain procedural violations and violations of the substantive provisions of the Minor Offences Act defining the minor offence. It explained that, when deciding on a request for judicial protection, the facts were not subject to judicial review by the court of its own motion, which meant that the court did not re-examine the facts but was only required to take evidence if the offender, in his or her request for judicial protection, raised doubts as to the decisive findings of fact made by the minor-offence authority and proposed evidence capable of supporting his or her arguments.

35. The Higher Court found that the applicants could have reviewed the evidence before filing their requests for judicial protection and, with specific arguments and evidence, raised doubts as to the conclusion that they had

committed the alleged offences. However, the applicants had neither specifically challenged the decisive findings of fact nor put forward any arguments which would cast doubt on the accuracy of the established facts. In particular, they had not claimed that they had not been aboard the vessels in question when the minor-offence authorities had attempted to stop them and conduct the minor-offence procedure, nor had they disputed their presence in the recorded material. Furthermore, the second applicant had not argued that he had complied with the inspector's request for him to stop, that he had enabled the inspector to perform his duties, that he had not fished with set nets or that he had been authorised to fish in Slovenian waters (see paragraph 10 above). Consequently, no further evidence needed to be examined. The court noted that the applicants' allegations mostly related to the question of identification of the offender. It found that by leaving the location of the minor offence, the applicants themselves had prevented identification on the basis of their identity documents. Consequently, the minor-offence authority had had to establish their identities using other methods. The court noted, as regards the first applicant, that the minor-offence authority had relied on personal identification, while as regards the second applicant, the minor-offence authority had relied on personal identification, photographs, his media appearances (*nastopi v medijih*) and searches of the public vessel database. The court further noted that the applicants had also been given the opportunity to view the photographs in the case files of the minor-offence authorities and to explicitly state that they were not in them. However, in their requests for judicial protection they had only claimed in general terms that the identification had not been carried out unequivocally. The court further held that, in accordance with section 82 of the General Administrative Procedure Act (see paragraph 53 below), parties had the right to access documents relating to a case, and that section 65(5) of the Minor Offences Act (see paragraph 47 below) was not applicable, since the applicants could have inspected their minor-offence case files.

36. The Higher Court also stated that the applicants could have relied on a "mistake of fact" if they had believed that they had been fishing elsewhere and not at the geolocations specified in the payment orders, which were part of Slovenian territorial waters. It noted, however, that they had not claimed not to have been fishing at those locations. It further held that the presence of the Croatian police did not justify a mistake of fact; rather, it indicated that the applicants had known that they had entered Slovenian waters, were required to undergo a border check and needed authorisation to fish in Slovenian waters. As regards the second applicant, the Higher Court further found that, irrespective of the actions of the Croatian police vessel, he had failed to stop his own vessel when instructed to do so by the fisheries inspector.

VI. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT CONCERNING BOTH APPLICANTS

37. Following the Higher Court's decisions, the applicants lodged constitutional complaints concerning their obligation to pay fines and court fees, which they argued had been a significant amount and had had a serious impact on their finances. They also considered that the decisions raised an important constitutional question going beyond the significance of their specific cases. To this end, the first applicant submitted, *inter alia*, that D.M. had also been issued with a payment order in relation to the same event, while the second applicant submitted, *inter alia*, that the Higher Court had already adopted decisions in twenty-one similar cases. Both applicants argued that no oral hearing had been held in either set of judicial protection proceedings and that the Local Court had refused to admit the evidence they had proposed in their requests for judicial protection (the examination of witnesses and their own oral testimony). They reiterated their argument (see paragraph 31 above) that they had only learned of the method and evidence used by the minor-offence authorities to establish their identities when the Local Court had delivered its judgments. They also claimed they had been unable to comment on that evidence or the circumstances surrounding it. The second applicant reiterated the argument made in his request for judicial protection (see paragraph 18 above) that it had been unclear which social media platforms the minor-offence authority had had in mind, and that he had been unaware that he could inspect the minor-offence case file. The applicants insisted that, considering the actions of the Croatian authorities, they had been convinced that they had been in the territory of the Republic of Croatia and thus could have not been accused of either negligence or intent in relation to the minor offences concerned. To this end, they had filed requests to have witnesses examined, which the Local Court had refused.

38. In its decisions Up-624/21 and Up-718/21, both dated 5 December 2022 (published in Official Gazette no. 158/22 of 19 December 2022), the Constitutional Court rejected the applicants' constitutional complaints. The decisions stated that there were over 630 comparable minor-offence cases involving Croatian fishing workers pending before it. Consequently, it had decided to issue reasoned decisions in the applicants' cases to reaffirm its position on the conditions that a constitutional complaint had to meet in minor-offence cases to be accepted for consideration on the merits. As regards the question of acquaintance with the evidence, the court referred to its decisions Up-319/10, U-I-63/10 of 20 January 2011, Up-497/14 of 24 November 2016 and Up-578/16 of 20 April 2017 (see paragraphs 65, 70 and 72 below). As regards the question of oral hearings in minor-offence proceedings, the court referred to its decisions Up-187/13 and Up-718/13, both dated 7 October 2015, and Up-854/14 of 20 April 2017 (see paragraphs 69 and 71 below). The court also referred to section 55a(1) and

(2) of the Constitutional Court Act (see paragraph 43 below), holding that the court fees and fines of EUR 500 and EUR 840 respectively could not be considered to amount to such serious consequences as to require examination of the applicants' complaints. It also noted that it had already ruled on important constitutional questions raised by the applicants, namely their alleged lack of opportunity to be heard at the main hearing, examine adverse witnesses and comment on the evidence. It therefore held that the examination of their constitutional complaints was not warranted in view of section 55a(3) of the Constitutional Court Act. It further held as follows:

> "Taking into account the positions [taken in] the decisions of the Constitutional Court ... in which the Constitutional Court established an infringement of human rights in cases of minor-offence proceedings [and] assuming that the complainant's allegations are well-founded, this could constitute a violation of the complainant's rights under Article 22 [Equal protection of rights] and the second and third indents of Article 29 [Legal guarantees in criminal proceedings] of the Constitution. However, ... the constitutional question is undoubtedly no longer at issue, because the Constitutional Court has already ruled on these issues in several of its previously stated decisions."

VII. ARRANGEMENTS REGARDING THE FINANCIAL IMPLICATIONS OF THE DOMESTIC PROCEEDINGS AND THE PROCEEDINGS BEFORE THE COURT

39. It appears from the documents submitted by the applicants that they entered into "assumption agreements" with the Croatian Government between 2019 and 2023, under which the latter agreed to cover the costs of minor-offence proceedings related to fishing activities in the area of concern. This included both the costs of the applicants' representatives, including in respect of the proceedings before the Court, and any enforced penalties imposed by the Republic of Slovenia for unlawful border crossing and fishing without a Slovenian permit. The assumption agreements further stipulated that, should the applicants receive compensation from the respondent State in respect of the cost of the proceedings, such amounts were to be reimbursed into "the State budget of the Republic of Croatia".

40. The applicants also submitted a copy of a business cooperation agreement between the law firm Kozinc and Partners, who represented them in the domestic proceedings, and the law firm Travaš and Partners, who represented them in the proceedings before the Court as a "stand-in" for Kozinc and Partners. Pursuant to that agreement, and as evidenced by copies of invoices submitted by the applicants, Travaš and Partners billed Kozinc and Partners for their work on the Croatian fishing workers' cases before the Court, including those of the applicants. In turn, Kozinc and Partners sought payment of those costs from the Croatian Ministry of Justice.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

41. Article 22 of the Constitution reads as follows:

(Equal protection of rights)

"Everyone shall be guaranteed equal protection of rights in any proceedings before a court and before other State authorities, local community authorities and bearers of public authority that decide on his rights, duties or legal interests."

42. Article 29 of the Constitution reads as follows:

(Legal guarantees in criminal proceedings)

"Anyone charged with a criminal offence must, in addition to absolute equality, be guaranteed the following rights:
- the right to have adequate time and facilities to prepare his [or her]defence;
- the right to be present at his [or her] trial and to conduct his [or her] own defence or to be defended by a legal representative;
- the right to present all evidence to his [or her] benefit;
- the right not to incriminate him [or herself] or his [or her] relatives or those close to him [or her], or to admit guilt."

II. DOMESTIC LEGISLATION

A. Constitutional Court Act

43. The relevant provisions of the Constitutional Court Act (Official Gazette no. 15/94 with amendments) read as follows:

Section 55a

"(1) A constitutional complaint shall not be admissible if the violation of human rights or fundamental freedoms in question has not had serious consequences for the complainant.

(2) It shall be deemed that there has been no violation of human rights or fundamental freedoms having serious consequences for the complainant with regard to individual decisions:

- issued in small claims disputes ...;

- concerning only a decision on the costs of proceedings ...;

- issued in trespass to property disputes;

- issued in minor-offence cases.

(3) Notwithstanding [subsection (2) above], the Constitutional Court may, in particularly well-founded cases, exceptionally decide on a constitutional complaint against the individual decisions referred to in [subsection (2) above]. An instance of a particularly well-founded case is a decision that concerns an important constitutional question which goes beyond the significance of the specific case."

Section 55b

"(1) A constitutional complaint shall be rejected:

...

- if it is not admissible, except in the cases referred to in [section 55a(3)];

...

(2) A constitutional complaint shall be accepted for consideration:

- if there has been a violation of human rights or fundamental freedoms which has had serious consequences for the complainant; or

- if it concerns an important constitutional question which goes beyond the significance of the specific case."

B. Minor Offences Act

44. Section 57 provides that where an authorised official of the minor-offence authority personally detects a minor offence, or establishes it using appropriate technical equipment or devices, he or she issues a payment order. If the offender is present, the payment order is served on him or her immediately on the spot (section 57(1)). If the payment order cannot be issued and served on the offender immediately on the spot, it is served in accordance with the provisions of the law governing general administrative procedure. Where the relevant facts and evidence are not indicated in the payment order itself, a brief description of the factual circumstances of the offence and a list of evidence are served on the offender together with the payment order.

45. A request for judicial protection against a minor-offence authority's decision may be filed with the competent court on the grounds of, *inter alia*, an alleged violation of substantive or procedural law, erroneous or incomplete determination of the facts, or to contest the sanction imposed (section 62 of the Minor Offences Act).

46. Under section 62a(1), in proceedings regarding a request for judicial protection, the court must always examine the following of its own motion: whether the minor-offence decision was taken by the authority with jurisdiction over the matter; whether there was a violation of the substantive provisions of the Act; whether the prosecution has become time-barred; whether the perpetrator was given the opportunity to provide a statement regarding the minor offence; whether the operative part of the decision is comprehensible; and whether the decision is based on evidence that, under the provisions of the Act, is inadmissible or has been obtained in violation of constitutionally guaranteed human rights and fundamental freedoms.

47. Section 65(5) provides that if, from the information in the case file, the court establishes certain facts concerning which the alleged perpetrator was not given the opportunity to provide a statement in the proceedings before the minor-offence authority or in the request for judicial protection, it notifies him or her accordingly; when such facts arise from the description of

the factual circumstances of the offence, it sends the description to him or her and provides information on where and when the case files may be examined.

48. Section 125(1) provides as follows:

Oral hearing

"(1) The judge conducting the minor-offence proceedings shall order an oral hearing if it is necessary to clarify the case.

(2) The defendant, his or her defence counsel, witnesses and, if necessary, an expert shall be invited to the oral hearing ...

..."

49. Section 163 provides, in so far as relevant, as follows:

Decision on appeal by the Higher Court

"...

(6) The higher court shall, at the oral hearing, supplement the evidentiary procedure ... and decide the case by judgment, if it finds this necessary owing to an incomplete establishment of the facts, as argued by the appellant on the basis of new facts and evidence which he or she has demonstrated could not have been submitted in the first-instance proceedings through no fault of his or her own.

(7) The higher court shall, at a session or an oral hearing, repeat individual items of evidence already taken ... and decide the case by judgment, if it finds that the evidentiary procedure must be repeated owing to an erroneous establishment of the facts."

50. On 17 December 2020 the Constitutional Court issued a decision in case U-I-304/20, recognising the right of individuals found responsible for a minor offence in summary proceedings to appeal to a higher court. On 7 May 2024 section 66 of the Minor Offences Act was amended to formally establish the right to appeal against the decision of a local court (the lowest instance court in Slovenia, which hears minor-offence cases).

51. Under section 169(3), a request for the protection of legality may be filed by the perpetrator of a minor offence or his or her defence counsel within three months from the date on which a judgment of the European Court of Human Rights becomes final, if the Court has found a violation of a human right or fundamental freedom under the Convention. A request for the protection of legality may also be filed if a violation of human rights and fundamental freedoms has been found in the event of a friendly settlement or a unilateral declaration by the State under the Convention. Section 426(1) of the Criminal Procedure Act, which is applicable to this type of proceedings by virtue of section 171 of the Minor Offences Act, provides that if the Supreme Court upholds a request for the protection of legality, it may, *inter alia*, remit the case to the competent court for a new decision or a retrial.

52. The Minor Offences Act provides that fines may be converted to substitute imprisonment (*nadomestni zapor*). Under section 20a(1), in cases where a fine or the total of two or more fines issued to a perpetrator amounts

to at least EUR 1,000 and cannot be recovered under the rules of administrative enforcement, the court may enforce the sanction by imposing one day of imprisonment for every EUR 100 of the fine, or fraction thereof, up to a maximum of 90 days. Only fines of at least EUR 300, imposed by an individual payment order, decision or judgment, may be included in the total. Moreover, under section 20a(2), in cases where a perpetrator has been issued ten or more fines, each amounting to less than EUR 300 per individual payment order, decision or judgment, and the total of these fines amounts to at least EUR 1,000 and cannot be recovered under the rules of administrative enforcement, the court may enforce the sanction by imposing one day of imprisonment for every EUR 100 of the outstanding fine, up to a maximum of 30 days.

C. General Administrative Procedure Act

53. Section 82(1) of the General Administrative Procedure Act (Official Gazette no. 24/06, with amendments) reads as follows:

> "Parties shall have the right to access documents relating to the case and transcribe or photocopy, at their own expense, the necessary documents in hard copy or electronic form. Access to, transcription and photocopying of documents shall be supervised by a designated official or shall take place in the authority's information system or the information system for receiving applications, service and notifications, in which parties prove their identity using a qualified electronic signature certificate.
>
> ..."

III. DOMESTIC CASE-LAW

54. The parties relied on numerous examples of domestic case-law; the most relevant decisions and judgments are summarised below.

A. The Constitutional Court's approach to examining constitutional complaints concerning minor-offence proceedings

55. In its decision Up-965/11 of 9 May 2013, concerning a traffic offence, the Constitutional Court held, *inter alia*, as follows:

> "7. [F]rom the perspective of human rights protection standards, it is constitutionally significant when a court issues a decision without even considering the provisions of the Constitution on human rights and fundamental freedoms. In such cases, it is no longer merely a question of a violation of the human right that the court has infringed upon with its decision. A further question arises as to whether the court's decision reflects an attitude that human rights in minor-offence cases ... need not be respected and that the court is not bound to interpret legal provisions in conformity with the Constitution. When the Constitutional Court ... is faced with such a situation, its decision goes beyond the significance of the specific case in which the human rights violation occurred, which warrants a decision on [the merits of] the constitutional complaint under section 55a[(3)] of the Constitutional Court Act."

56. In a number of decisions issued on 20 April 2017 (see paragraphs 71 to 73 below), the Constitutional Court dealt with constitutional complaints concerning the right to an oral hearing or to comment on incriminating evidence in minor-offence proceedings. While finding in favour of the complaints, the court noted that, as a general rule, if it had already adopted a position on the important constitutional question, the condition referred to in section 55a(3) of the Constitutional Court Act (see paragraph 43 above) was not fulfilled – except when it established that it was necessary to ensure compliance with previous decisions and with the constitutional rights of individuals in minor-offence proceedings (see *Rutar and Rutar Marketing d.o.o. v. Slovenia*, no. 21164/20, § 21, 15 December 2022). In its decisions Up-847/14 and Up 854/14 of 20 April 2017 (see also paragraph 71 below) the Constitutional Court held, *inter alia*, as follows:

> "6. The Constitutional Court has already addressed the issue of when an offender in minor-offence proceedings must be guaranteed the right to be present at the hearing, the right to orally present arguments to the court, and the right to directly confront the authors of incriminating statements (the right to an oral hearing) in its decisions Up-187/13 and Up-718/13, both dated 7 October 2015 ... The European Court of Human Rights (ECtHR) has also ruled on this matter in several cases against the Republic of Slovenia, specifically in its judgments in *Flisar v. Slovenia* (29 September 2011), *Milenović v. Slovenia* (28 February 2013) and *Kastelic v. Slovenia* (19 June 2014) ...
>
> 7. ... The ECtHR's judgment is precedent-setting in this respect, both for the Constitutional Court and for all other courts in the country. Only if the Constitution guarantees a higher level of protection of a particular human right or fundamental freedom than the [Convention], can it be said that the ECtHR's judgment does not already establish a precedent-setting standard of protection in the country. That is not the case here; rather, the rights in question are equally protected under both the [Convention] and the Constitution. Nevertheless, the Constitutional Court exceptionally examined the constitutional complaint also in the part concerning the alleged violation of the right to an oral hearing. It found that, in order to safeguard the rights of defendants in minor-offence proceedings – rights guaranteed by both the Convention and the Constitution – it was necessary to reiterate the principles set out in the cited ECtHR judgments. However, this does not mean that the Constitutional Court will henceforth examine every constitutional complaint that justifiably draws attention to non-compliance with the ECtHR judgments in minor-offence proceedings. It is not the Constitutional Court's role to repeatedly emphasise this. In a State governed by the rule of law ... where international treaties are directly applicable ... it is expected that courts will not overlook ECtHR judgments interpreting directly applicable [Convention] provisions, and will take them into account in their judicial decision-making. This obligation arises from the Constitution, which courts are directly bound to when adjudicating cases ... Therefore, in accordance with its powers under section 55a of the Constitutional Court Act, the Constitutional Court will continue to decide constitutional complaints in minor-offence cases only exceptionally, when they raise significant constitutional questions that go beyond the decision in an individual case."

57. In its decision Up-942/14 of 20 April 2017 (see also paragraph 73 below) the Constitutional Court held, *inter alia*, as follows:

"4. ... This position would lead to the conclusion that the present constitutional complaint is inadmissible, as the Constitutional Court has already addressed the question of when a court must allow an offender in minor-offence proceedings to present evidence in [his or her] favour, in its decision Up-486/03 of 9 July 2004 ...

...

5. However, in its decision Up-965/11 of 9 May 2013 (Official Gazette of the Republic of Slovenia, no. 47/13 ...[see paragraph 55 above]), the Constitutional Court – faced with a case where a court in minor-offence proceedings completely ignored a previous decision of the Constitutional Court, thereby violating the complainant's constitutionally guaranteed rights – exceptionally ruled on a constitutional question it had already addressed. The Constitutional Court stated that such cases go beyond a mere violation of a specific human right [resulting from] a court's decision. Rather, they raise a further issue of whether the court's approach reflects a position that human rights and fundamental freedoms in minor-offence cases do not need to be respected at all ... and that courts are not bound to interpret legal provisions in accordance with the Constitution.

...

6. This case presents a similar issue, as the [lower] court ruled as if the aforementioned Constitutional Court decisions, which were published in the Official Gazette of the Republic of Slovenia before the contested judgment was issued, did not exist. To ensure compliance with its decisions and to uphold the constitutional rights of defendants in minor-offence proceedings, the Constitutional Court has exceptionally accepted the constitutional complaint for consideration. It has taken the same approach in several similar cases, emphasising the importance of these rulings. However, this does not mean that the Constitutional Court will continue to review every constitutional complaint that highlights a failure to respect constitutional precedents in the protection of human rights in minor-offence proceedings. It is not the role of the Constitutional Court to repeatedly remind lower courts of the binding nature of its decisions ... Therefore, the Constitutional Court will, in the future, exercise its authority under section 55a of the Constitutional Court Act and only exceptionally decide constitutional complaints in minor-offence cases if they raise significant constitutional questions that go beyond the specific case. Such cases primarily include those in which the Constitutional Court must establish precedent-setting standards for the protection of human rights. Once these standards are set, courts must follow them to ensure effective protection of human rights and fundamental freedoms in all judicial proceedings."

58. A similar case to those mentioned in paragraph 56 above was examined by the Constitutional Court on 22 January 2019 (Up-580/15, see also paragraph 74 below). It explained that it had ruled on the merits of the complainant's constitutional complaint to ensure equal protection of the rights of complainants who had lodged their complaints prior to the relevant decisions of 20 April 2017 (see paragraph 56 above).

59. In its decision Up-150/19 and Up-151/19 of 5 March 2020, concerning a minor offence under the Public Procurement Act, the Constitutional Court noted that it had already taken a position on the constitutional aspects of the requirement to apply a subsequently adopted more lenient law several times, but that the case at issue required the consideration of specific aspects of this principle which the Constitutional

Court had not yet addressed. It therefore accepted the constitutional complaint for consideration.

60. On 18 September 2023 the Constitutional Court, in its decisions Up-60/23 and Up-65/23, dismissed constitutional complaints brought by the first applicant and another fishing worker, E.K., relating to different sets of minor-offence proceedings. The court reiterated its position from its decisions Up-624/21 and Up-718/21, rendered against the applicants in relation to the domestic proceedings referred to in the present case (see paragraph 38 above). In addition, it warned that a fine would be imposed if any new constitutional complaints were lodged regarding the same allegations. The relevant parts of decisions Up-60/23 and Up-65/23, which were almost identically worded, read as follows:

> "4. The complainant's allegations are essentially the same as those addressed by the Constitutional Court panel in decision ... of 5 December 2022 [see paragraph 38 above], in which it dismissed the constitutional complaint in a minor-offence case as inadmissible, as the condition under section 55a[(3)] of the Constitutional Court Act had not been met. In that decision, the court found, among other things, that this was clearly no longer a particularly justified case in a minor-offence matter, as the Constitutional Court had already addressed the key constitutional issues raised by the complainant in this constitutional complaint in several of its previous decisions. The present case also raises the same constitutional questions in substance, regarding which the Constitutional Court panel has already established in the aforementioned decision that this was clearly no longer a particularly well-founded case in a minor-offence matter. For the same reasons ... the constitutional complaint in the present case must also be dismissed as inadmissible.
>
> 5. A decision by the Constitutional Court dismissing a constitutional complaint ... generally contains only a statement of the grounds for decision ... In this case, the panel chose to provide reasoning in the relevant part to emphasise and reiterate that such constitutional complaints cannot succeed. The panel also notes that the complainant's legal representative had already been informed that such allegations in a constitutional complaint in matters relating to minor offences cannot be successful. Decision ... of 5 December 2022 was served on the complainant's legal representative on 13 December 2022 and was published in the Official Gazette of the Republic of Slovenia ... on 19 December 2022. The complainant's legal representative could therefore have reasonably concluded that, as a general rule, a constitutional complaint in a minor-offence case containing such allegations would be inadmissible. However, despite this, he submitted a new constitutional complaint with exactly the same allegations. In a situation such as this, the Constitutional Court points out that the constitutional complaints may constitute an abuse of the right to file a constitutional complaint. A complainant who abuses the rights granted under the Constitutional Court Act may be fined between EUR 100 and EUR 2,000 by the Constitutional Court. The same applies to [his or her] legal representative."

B. Domestic case-law concerning the right to an oral hearing and the right to access and comment on incriminating evidence in minor-offence proceedings

1. The Supreme Court's case-law

61. In its decision IV Ips 58/2007 of 28 February 2008, concerning a traffic violation, the Supreme Court held, *inter alia*, as follows:

> "4. The offender filed a request for judicial protection against the payment order ... and, among other things, stated that no one had presented him with any evidence on which the payment order had been based ... He claims that at the time in question he was at home asleep, which he will prove, if necessary, with a witness.
>
> ...
>
> 11. ... In order to respect the fundamental guarantees of a fair trial, the court [which was deciding the request for judicial protection] should have informed the offender of the key incriminating facts and allowed him to comment on them before deciding on the request for judicial protection ... Such a requirement directly stems from the Constitution and constitutional case-law."

62. In its decision IV Ips 63/2013 of 4 July 2013, concerning a minor offence under the Hospitality Industry Act, the Supreme Court held, *inter alia*, as follows:

> "10. ... In ordinary minor-offence proceedings, the court holds an oral hearing (only) if it considers it necessary to clarify the case. However, the judge's decision whether to hold an oral hearing is not left entirely to [his or her] subjective assessment of whether the minor-offence authority has correctly and completely established the facts and whether the evidentiary process needs to be supplemented or repeated in accordance with the rules of ordinary judicial procedure. Rather, this judicial assessment is limited by the offender's right to a fair trial. In some cases, the offender will be guaranteed the right to a fair trial simply by allowing [him or her] to access the case file and submit a written statement on the legal and factual aspects of the case (for example, when the offence is established using technical means). In other cases, however, a fair trial can only be guaranteed by allowing the offender to be present in person, put forward evidence in [his or her] favour, directly examine incriminating evidence and question adverse witnesses (for example, when the sole basis for punishment is the police officers' observations and the offender provides a reasoned challenge to the credibility of their findings in the request for judicial protection) ..."

63. In its decision IV Ips 39/2015 of 16 June 2015, concerning a traffic violation, the Supreme Court held, *inter alia*, as follows:

> "14. The Supreme Court agrees with the opinion of the Supreme State Prosecutor that, in the present case, the sole basis for the offender's punishment was the direct observations of ... the police officers. The offender challenged the credibility of their statements in his request for judicial protection, stating that when he had entered the intersection, the traffic light had turned yellow ... The court accepted the findings of the police officers, as presented in the description of the factual circumstances of the offence attached to the payment order, without allowing the offender to present his arguments orally ... or question the authors of the incriminating statements ... The court's conclusion that the request for judicial protection should be rejected because it found no reasonable grounds not to follow the police officers' findings, is contrary to

> the legal guarantees provided in Articles 22 and 29 of the Constitution ... Given the reasoned arguments in the request for judicial protection, the court could have only made a proper assessment of the evidence if it had heard the offender and the authors of the incriminating statements and allowed the offender to actively participate in the process. Only in this way would the offender have been guaranteed a fair trial. The court's conclusion that it did not believe the offender's assertion that he entered the intersection when the traffic light was yellow, because his statements were unpersuasive and not supported by any evidence, is not convincing enough to relieve the court of its obligation to test the credibility of the evidence [directly]."

64. In its decision IV Ips 25/2016 of 21 June 2016, concerning a traffic violation, the Supreme Court held, *inter alia*, as follows:

> "9. ... [I]t is the court's duty, before making a decision on the merits of the request for judicial protection, to verify whether the case file contains legally relevant facts and evidence on which the perpetrator has not yet had the opportunity to comment. It is only upon the filing of a request for judicial protection that full adversarial proceedings are established ... If [certain] facts arise from the description of the factual circumstances of the offence, the court must provide the description to the perpetrator. At the same time, [it] must inform the perpetrator of where and when [he or she] can review the case file, instruct [him or her] in accordance with section 114[(4)] of the Minor Offences Act ... and set a deadline by which [he or she] can submit statements, proposals and requests."

2. The Constitutional Court's case-law

65. In its decision Up-319/10, U-I-63/10 of 20 January 2011, concerning a traffic violation, the Constitutional Court held, *inter alia*, as follows:

> "If the court supplements or repeats the evidentiary procedure in deciding on the request for judicial protection, it must ensure that the offender has the opportunity to be present during this procedure."

66. In its decision Up-1544/10 of 21 June 2012, concerning a traffic violation, the Constitutional Court held, *inter alia*, as follows:

> "16. In the minor-offence proceedings conducted in the present case, the court was determining whether the complainant was the person responsible for the alleged offence. As already explained, the complainant built his written defence on the claim that he was not the one who committed the speeding offence, as he owns multiple vehicles that he lends to both family members and employees of his company. To support his defence and further develop his argument, he proposed ... that the court hear the testimony of the police officers who had identified him at the scene of the offence. Therefore, in order to establish who the actual offender was – considering ... constitutional case-law and the case-law of the [ECtHR] ... – the court should have allowed the complainant to build his defence further by questioning the police officers who identified him at the scene. The statements of these officers were the key evidence on which the court based its determination of the offender's identity. The court should have thus provided the complainant with the opportunity to confront and examine these witnesses ..."

67. In its decision Up-1293/10 of 21 June 2012, concerning traffic violations and minor offences against public order, the Constitutional Court held, *inter alia*, as follows:

> "11. ... According to the contested position, the complainant would have the right to confront the adverse witness in the judicial protection procedure only when the court itself doubted the correctness and completeness of the witness's observations or their credibility, on the basis of the defence's arguments in the request and the documents in the file of the administrative authority. This position constitutes a violation of the right to hear adverse witnesses, as guaranteed by Article 6 [§ 3 (d)] of ... the [Convention] and Article 29 of the Constitution."

68. In its decision Up-965/11 of 9 May 2013, concerning a traffic offence, the Constitutional Court held, *inter alia*, as follows:

> "13. The court based the conclusions of the contested judgment regarding the decisive facts of the alleged offence on the observations of a plainclothes officer, as recorded in the description of the factual circumstances of the offence, even though the complainant was not allowed to become familiar with the description beforehand. This prevented her from (either in writing or orally during the hearing) commenting on the key incriminating evidence, thus violating her right under Article 22 of the Constitution. At the same time, it prevented the complainant from proposing the examination of the officer, whose direct observations were recorded in the description of the facts, thereby depriving her of the right to confront the adverse witness, as guaranteed by Article 29 of the Constitution. The complainant did not have the information on the basis of which she could propose the examination of the officer until she received the judgment ..."

69. In its decisions Up-187/13 and Up-718/13 of 7 October 2015 the Constitutional Court found that where an allegation of a minor offence was based not on objectively obtained evidence – such as that from a speed-measuring device or breathalyser – but rather on the police's own account or observation, the right to an effective defence required that the courts determine the facts and the individual's responsibility through the direct taking of evidence at an oral hearing. In Up-718/13, the Constitutional Court held that since the local court was the first and usually the only level of jurisdiction in minor-offence proceedings – and could decide on factual issues – all procedural safeguards applicable to a first-instance court (such as immediacy, adversarial process and oral and public hearings) had to be ensured, in principle. As a result, any decision regarding whether evidence should be taken in such proceedings before the court warranted stricter scrutiny. In this connection, the Constitutional Court stated as follows:

> "The central part of judicial decision-making lies precisely in the assessment of the parties' submissions and arguments, the taking of proposed evidence regarding the existence of legally relevant facts, and the free evaluation of such evidence ... In such a situation, the judge is, in principle, free to assess the individual pieces of evidence only if he perceives directly, with his own senses, the characteristics and nature of the evidence, as well as its content. At the very core of the right to a fair trial is therefore the accused's right to be present at the hearing, to be able to make direct statements before the court about the facts and circumstances relevant to the decision, and to have the evidence on which the decision is based examined in his presence, in accordance with the principles of immediacy and adversarial proceedings. It is difficult to imagine how all these procedural actions could be carried out – or how the individual could be guaranteed them – other than directly, at an oral (adversarial) hearing."

70. In its decision Up-497/14 of 24 November 2016, concerning a traffic violation, the Constitutional Court held, *inter alia*, as follows:

> "10... In his request for judicial protection, the complainant claimed, among other things, that he had not committed the alleged offences ...
>
> 11. The minor-offence authority submitted to the court, along with the complainant's request for judicial protection, a description of the factual circumstances of the offence and photographs of the vehicle taken at the time of the offence ...
>
> 13 ... It is not possible to determine from the payment order, which (in addition to details about the offender and the place and time of the offence) contains only the legal classification of the offences and a statement that the complainant committed the offences as the driver of a tractor with a trailer, whether the alleged offences for driving an unregistered and uninsured vehicle relate to the tractor or the trailer. This distinction only becomes apparent from the description of the factual circumstances of the offence submitted by the minor-offence authority to the court after the request for judicial protection against the payment order was filed. Likewise, the circumstances allegedly constituting an offence due to the transport of improperly loaded cargo are only evident from the description of the factual circumstances of the offence provided by the minor-offence authority and the photographs, which were not attached to the payment order. Additionally, before the court ruled on the request for judicial protection, the complainant could not have known the content of the documents obtained by the court on its own initiative. This concerns (incriminating) evidentiary material with which the complainant was not familiar by any other means, and the court should therefore have informed him of this material and allowed him to respond. Since the court failed to do so, it deprived the complainant of the opportunity to participate in the evidentiary procedure, thereby violating his right to be heard under Article 22 of the Constitution."

71. In its decision Up-847/14 and 854/14 of 20 April 2017, the Constitutional Court held that in minor-offence proceedings, the court should hold an oral hearing whenever the offender raised issues that cannot be resolved solely from the case file – particularly when challenging the credibility of evidence based on personal observation rather than objective methods. In the case Up-847/14 it also held as follows:

> "14. ... This means that the offender must either be provided with the incriminating statements and evidence or be informed that they are included in the case file and may be reviewed. However, it is not permissible to require the offender to independently inquire whether the minor-offence authority has additional incriminating evidence that has not been disclosed to [him or her]."

72. In its decision Up-578/16 of 20 April 2017, concerning a traffic violation, the Constitutional Court held, *inter alia*, as follows:

> "10 ... The court based its judgment on three photographs of the intersection, which it did not inform the complainant of or give him the opportunity to comment on. This constitutes new (incriminating) evidence of which the complainant was not made aware. The court should have informed the complainant of this evidence and allowed him to respond. By failing to do so, the court deprived the complainant of the opportunity to participate in the evidentiary procedure, thereby violating his right to be heard under Article 22 of the Constitution."

73. In its decision Up-942/14 of 20 April 2017, concerning a traffic offence, the Constitutional Court held, *inter alia*, as follows:

> "10. ... When an offender proposes the testimony of an exculpatory witness, the court must allow this evidence if the complainant demonstrates that the witness exists and could testify to legally relevant facts. The court can only assess whether the complainant has raised a reasonable doubt regarding the statutory presumption under section 8[(1)] of Road Traffic Rules Act (liability of the owner of the vehicle) after hearing the witness."

74. In its decision Up-580/15 of 22 January 2019, concerning a traffic offence the Constitutional Court, held, *inter alia*, as follows:

> "11. ... The complainant's right to a hearing in his presence, as guaranteed by the second indent of Article 29 of the Constitution, was violated, as this case involved direct observation of the minor offence [being committed]. While the speed was measured using an objective method, the determination of which vehicle was measured was based on the observations of the minor-offence authority ... The complainant's right to present evidence in his favour, as guaranteed by the third indent of Article 29 of the Constitution, was also violated, because he had demonstrated the existence and ... relevance of the proposed evidence in his request for judicial protection ... In the new proceedings, the court must consider the positions expressed in the Constitutional Court's decisions and the judgments of the [ECtHR] and ensure that the complainant is granted the rights to a hearing in his presence and to present evidence in his favour."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

76. The applicants complained that they had not had an oral hearing, even though dispensing with such a hearing had not been justified, and that they had been unable to examine witnesses against them and witnesses on their behalf. They also complained that they had not been informed of some of the evidence on which their charges and ensuing convictions had been based, and that they had therefore been unable to effectively mount a defence. They relied on Article 6 §§ 1 and 3 of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ..."

(b) to have adequate time and facilities for the preparation of his defence;

...

(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

1. The parties' submissions

(a) The Government

77. The Government raised a preliminary objection that the applicants had lodged their applications outside the four-month time limit. They submitted that the final decisions in their cases had been those of the Higher Court. Referring to a number of the Constitutional Court's decisions (see "Domestic case-law" above), the Government argued that the constitutional complaint could not be considered an effective remedy in the applicants' cases because the constitutional issues raised by them had already been considered by the Constitutional Court in the past, precluding an examination in the future. In the Government's view, the applicants should have known as early as 20 April 2017 that the Constitutional Court would not rule on the merits of minor-offence cases involving issues that it had already decided (see paragraphs 56 and 57 above). They contended that the decision of 5 March 2020 (Up-150/19 and Up-151/19 – see paragraph 59 above) to which the applicants had referred was irrelevant, as it concerned the principle of *lex mitior* in the context of minor offences and not the right to an oral hearing and to examine evidence and have evidence examined on a defendant's behalf. Furthermore, the applicants' situation was different from that in *Rutar and Rutar Marketing d.o.o. v. Slovenia* (no. 21164/20, 15 December 2022), since they should have known from the Constitutional Court's decisions of 20 April 2017, which had been published in the Official Gazette, that the constitutional complaint was no longer considered an effective remedy for their grievances.

78. The Government further argued that the applicants' complaint concerning their alleged lack of opportunity to examine the evidence against them should be rejected for non-exhaustion of domestic remedies. In this connection, they submitted that, in accordance with section 82 of the General Administrative Procedure Act (see paragraph 53 above), the applicants had had the opportunity to access the minor-offence case file and examine all the evidence contained therein, but that they had not availed themselves of that opportunity.

(b) The applicants

79. The applicants submitted that the criminal limb of Article 6 applied to the proceedings referred to in their applications, and that the Court had previously found cases concerning charges similar to those brought against them to be criminal in nature.

80. The applicants further argued that constitutional complaints constituted an effective remedy that had to be exhausted in cases against Slovenia. They submitted that the Constitutional Court's case-law prior to the decision of 18 September 2023 (threatening to impose a fine on the lawyers, see paragraph 60 above) had not ruled out the possibility that complaints such as theirs could potentially be successful. Despite the Constitutional Court's statements that it would not consider issues it had previously addressed – particularly in its decisions of 20 April 2017 (see paragraphs 56 and 57 above), it had nonetheless dealt with constitutional matters it had already examined. The applicants referred to a number of Constitutional Court decisions in support of that argument, including its decision of 5 March 2020 (Up-150/19 and Up-151/19, see paragraph 59 above). It was not therefore possible to conclusively determine that their constitutional complaints would have been rejected, all the more so given that their complaints had raised the important issue of the courts' failure to respect previously established standards, an issue that had gone beyond their individual cases. Consequently, the date of the final decision was the date of the Constitutional Court's decision in both applicants' cases

81. The applicants moreover argued that the purported right to consult the case file could not be considered an effective remedy for their alleged violations, as alleged by the Government.

(c) The Croatian Government

82. The Croatian Government argued that the decisions of the Slovenian Constitutional Court, including those relied on by the Slovenian Government in their observations, supported the view that the Slovenian Constitutional Court enjoyed discretion in considering arguments raised in minor-offence proceedings. They submitted that the issue raised by the applicants in their constitutional complaints concerned a significant number of people and was important not only from the perspective of the applicants' rights but also for the proper administration of justice. The Slovenian Constitutional Court had the primary responsibility to ensure the implementation of the Constitution and its own case-law. By refusing to deal with the merits of the applicants' constitutional complaints, it had transferred responsibility for the consideration of the applicants' cases to the Court and had thereby acted contrary to the principle of subsidiarity of the Convention system.

2. The Court's assessment

(a) Applicability

83. The Court notes that it is undisputed between the parties that the domestic proceedings brought against the applicants concerned "criminal charges" within the meaning of Article 6 § 1 of the Convention. It finds that Article 6 in its criminal limb applies to the present case (see *Flisar v. Slovenia*, no. 3127/09, §§ 25-26, 29 September 2011; *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, no. 47072/15, §§ 45-46, 23 October 2018; *Suhadolc v. Slovenia* (dec.), no. 57655/08, 17 May 2011; and *Marguč v. Slovenia* (dec.), no. 14889/08, 15 January 2013).

(b) Objection regarding compliance of the present applications with the four-month rule

84. The Court takes note of the Government's objection regarding compliance of the present applications with the four-month rule under Article 35 § 1 of the Convention. This objection is directly related to the question of the effectiveness of the constitutional complaint. Indeed, the Government argued that this remedy had been bound to fail, of which the applicants should have been aware. Therefore the final decisions in their cases had been those of the Higher Court (see paragraph 77 above).

85. The Court reiterates that the object of the four-month rule is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Lekić v. Slovenia* [GC], no. 36480/07, § 64, 11 December 2018, and *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-40, 29 June 2012). It further observes that the requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the four-month period are closely interrelated, as the four-month period runs from the date of the final decision in the process of exhaustion of domestic remedies.

86. The Court also notes that Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his or her complaint before his or her position in connection with the matter has been finally settled at domestic level, otherwise the principle of subsidiarity would be breached. However, this provision allows only remedies which are normal and effective to be taken into account. An applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (see, among many other authorities, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 130-32, 19 December 2017). It follows

that if an applicant has recourse to a remedy which is doomed to fail from the outset, the decision on that appeal cannot be taken into account for the calculation of the relevant period (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016, and *Lekić*, cited above, § 65).

87. Turning to the circumstances of the two applicants' cases, the Court begins by noting that the applicants, having had their appeals dismissed by the Higher Court, lodged constitutional complaints in accordance with domestic law. Having also been unsuccessful before the Constitutional Court, they lodged their applications with the Court within four months from the date on which they had received the Constitutional Court's decisions. The Constitutional Court dismissed their complaints, referring to section 55a(1) and (2) of the Constitutional Court Act (see paragraphs 38 and 43 above). It found that the fines and court fees imposed on the applicants could not be considered to amount to such serious consequences as to require examination of their complaints, and that since it had already ruled on important constitutional questions raised by them, the examination of their complaints was not warranted in view of section 55a(3) of the Constitutional Court Act (ibid.).

88. It has not been disputed that the applicants argued that their cases concerned an important constitutional question and that they complied with the formal requirements for submitting their constitutional complaints. Their situations are therefore not comparable to that of *Rutar and Rutar Marketing d.o.o*. In that case the applicants were alleged to have failed to lodge their constitutional complaint in accordance with the domestic legal requirements because they did not set out "a reasoned proposal for the exceptional consideration of an otherwise inadmissible complaint" (cited above, § 46; see also the Government's argument in this regard at paragraph 77 above).

89. The Government however argued that, given the Constitutional Court's past approach to the issues raised, the applicants should have assumed that their constitutional complaints had no prospect of success and should have lodged their applications with the Court without first pursuing that remedy.

90. The Court is not persuaded by this argument because it is not satisfied that, at the time of lodging their constitutional complaints, the applicants should have considered the Constitutional Court to lack the power or competence to offer effective redress. This conclusion rests on the following grounds.

91. In several previous cases which, like the present cases, concerned the application of section 55a(2) of the Constitutional Court Act, the Court has taken the view that the limitation of the Constitutional Court's jurisdiction to important constitutional questions has not been such as to entirely prevent applicants' complaints from being examined by that court on the merits. Having regard to the importance of the subsidiarity of the Convention system,

the Court has thus far required applicants to use a constitutional complaint even in cases falling within the scope of section 55a(2). However, it has given certain indications that it could depart from this requirement if an applicant showed that the issues raised by his or her case had previously been consistently considered by the Constitutional Court not to be capable of raising an important constitutional question (see *Kneževič and Others v. Slovenia* (dec.), no. 51388/13, § 31, 19 September 2017; *Rutar and Rutar Marketing d.o.o.*, cited above, § 45; *Flisar*, cited above, §§ 27-28; and *Bradeško and Rutar Marketing d.o.o. v. Slovenia* (dec.), no. 6781/09, §§ 30-38, 7 May 2013).

92. There is no doubt that the applicants did not intend to argue that the Court should, in their cases, depart from the above-mentioned requirement that constitutional complaints be used, in cases brought against Slovenia, as part of the process of exhaustion of domestic remedies. However, the Government argued in favour of such a departure, relying in this connection on the Constitutional Court's decisions of 20 April 2017 (see paragraphs 56 and 57 above). These decisions essentially indicate that the Constitutional Court will review constitutional complaints only in exceptional cases – that is, when they concern significant legal issues rather than mere compliance with existing precedents. These decisions, along with other case-law submitted to the Court, further indicate that complete disregard of the Constitutional Court's decisions by lower courts could justify exceptional consideration of a case by that court (see, for instance, paragraphs 55, 56 and 57 above).

93. While the foregoing suggests that the success of constitutional complaints in cases falling under section 55a(2) of the Constitutional Court Act had been considerably limited, it does not follow that such complaints were *a priori* doomed to fail. This seems all the more true with respect to the issues raised by the applicants, which, as acknowledged by the Constitutional Court, at the time concerned over 630 comparable minor-offence cases (see paragraph 38 above) and touched on issues which had previously been considered by that court (see paragraphs 65-74 above). While the Constitutional Court ultimately dismissed the constitutional complaints on the grounds that it had already addressed the key constitutional issues raised by the complainants in its previous case-law, the Court notes that the Constitutional Court nevertheless considered it appropriate to provide reasons for its decisions (see paragraph 38 above), reaching an outcome that the applicants could not reasonably have foreseen.

94. In view of the foregoing, the Court finds that the Government have not demonstrated that the constitutional complaints lodged by the applicants could be regarded as inappropriate or misconceived remedies which could be considered doomed to fail from the outset and should therefore not be taken into account for the calculation of the four-month time-limit (see, for example, *Lopes de Sousa Fernandes*, cited above, § 138, and *Toplak and*

Mrak v. Slovenia, nos. 34591/19 and 42545/19, § 73, 26 October 2021). This finding is without prejudice to the Court's examination of this issue in any future cases decided by the second-instance court following the publication of the Constitutional Court's decisions in the applicants' cases (see paragraph 38 above; see also the subsequent Constitutional Court's decision further clarifying its approach to this type of case – paragraph 60 above).

95. With respect to the Constitutional Court's position summarised in paragraph 38 above, the Court considers it appropriate to emphasise that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. The rule of exhaustion of domestic remedies is an indispensable part of the functioning of this system of protection (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014). In keeping with this, any alleged violation of rights enshrined in the Convention should be addressed at the domestic level, all the more so where it indicates a potentially systemic problem. This forms an integral part of the "shared responsibility" between the States Parties and the Court, based on the notion that it falls on the national authorities and courts to ensure the effective implementation of the Convention (see *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022 and, most recently, Appendix IV of the Reykjavík Declaration).[1]

(c) Objection concerning the exhaustion of domestic remedies

96. The Government argued that the applicants' complaint concerning their alleged lack of opportunity to examine the evidence against them should be rejected for non-exhaustion of domestic remedies because they had failed to use the possibility, under section 82 of the General Administrative Procedure Act (see paragraphs 53 and 78 above), to consult the case file in their respective cases. The Court finds that this objection closely relates to the substance of the applicants' complaint. It therefore joins it to the merits.

(d) Conclusion

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

[1] Declaration of the Fourth Summit of Heads of State and Government of the Council of Europe (Reykjavík, Iceland, 16-17 May 2023).

B. Merits

1. The parties' submissions

(a) The applicants

98. The applicants explained that they had understood from the payment orders that their identification had been based on the officials' personal observations. These officials should have therefore been heard by the Local Court. That court should have reviewed the evidence (photographs and video-recordings), questioned the officials and directly determined whether the applicants were indeed the perpetrators. In this connection, they submitted that they had contested their convictions and disputed various factual aspects of their cases, including their identification by the officials. The officials' personal observation of their identity could not have been considered reliable evidence, since the officials could have easily confused their identity with that of other fishing workers in the area. In any event, given that the credibility of the incriminating evidence had been disputed, an oral hearing should have been held because there had been no exceptional circumstances that would have justified dispensing with such a hearing. Moreover, witnesses against them and witnesses on their behalf should have been examined. The Local Court's failure to accept their proposals for evidence or to hear them had constituted a violation of the principle of equality of arms.

99. The applicants also alleged that they had not had the opportunity to comment on some of the evidence relied on by the domestic authorities. They argued that they had only learnt of the "official records and other databases" allegedly used to establish their identity from the judgments. In this connection, they also referred to being identified on the basis of "other procedures and public media". The first applicant further alleged that the Local Court, which had dealt with her request for judicial protection, had referred to additional information, such as an official note which mentioned the public vessel search engine, unspecified appendices, video footage, police records and previous proceedings – without these being specified in any way – as sources for her identification. Moreover, neither the vessel search engine nor the police records had been referred to in the payment order against her. The second applicant, for his part, submitted that the Local Court's judgment had referred to the official note drawn up by the fisheries inspector and stated that his identification had been based on the inspector's personal recognition with the help of photographs and social media. This evidence lacked further specificity. As a result, he had been unable to respond adequately to the allegations against him. He also submitted that he had only learned of the information regarding the ownership of the vessel in question from the first-instance judgment, and that the photographs to which the payment order referred had not been served on him.

100. Furthermore, both applicants argued that while the Government had claimed that the ownership of the vessel had not been a factor in identifying the perpetrators in the proceedings in question, the official notes drawn up by the officers indicated that the public vessel database and information regarding vessel ownership had been consulted as part of the identification process.

101. The applicants submitted that they had raised the above arguments in their respective remedies. However, neither the first-instance court nor the second-instance court had explained why they had accepted the minor-offence authorities' finding that they had committed the offences in question. The second-instance court had also completely disregarded their complaints that they had not had the opportunity to comment on the evidence cited by the first-instance court regarding their identity.

102. As regards the possibility of consulting the case file, the applicants submitted that they had had no reason to assume that their conviction could be based on evidence other than that listed in the payment orders and therefore had no reason to consult the case file prior to lodging their requests for judicial protection. They further argued that this possibility had not been indicated in the payment orders, and that, in any event, by not exercising their purported right to examine the case file, they had not waived their right to a fair trial.

(b) The Government

103. The Government submitted that the domestic courts, when ruling on a request for judicial protection, did not review the facts underpinning an offence of their own motion. They were only required to take evidence if a defendant, in his or her request for judicial protection, raised doubts as to the description of the factual circumstances of the offence provided by the minor-offence authority.

104. The Government argued that in the domestic proceedings, the perpetrators' identities had not been determined on the basis of the ownership of the two vessels involved. The official records showed that the vessels with which the minor offences had been committed had not been owned by the applicants. The official notes referring to the ownership of the vessels therefore carried no weight in identifying the applicants. The Government further submitted that the applicants had been identified as the perpetrators of the offences in question on the basis of personal observations by the officials. The identification procedure, carried out by verifying identity documents, had been prevented by the Croatian police vessels and the applicants' absconding.

105. Evidence, such as photographs and video-recordings, had also been collected and supported the identification of the applicants. These items of evidence had been indicated in the payment orders and the applicants could have examined them by consulting the case file and subsequently challenging them. In their requests for judicial protection, the applicants had not disputed

that they were the individuals in the photographs and video-recordings of the offences obtained through the use of technical means and included in the respective case files. Nor had they claimed to have an alibi or provided any evidence to support this.

106. The Government further argued that, in their requests for judicial protection, the applicants had "raised no objections to the specific geolocation at which the Slovenian authorities [had] established the commission of the offences". Also, the applicants had not disputed that vessels 373-UM and 49-UM had been involved in the offences and had expressly acknowledged that they had been at sea at the time of the alleged offences. Moreover, in the Government's submission, the applicants had been aware of their obligation to undergo the required border checks and to hold a fishing permit issued by the Republic of Slovenia when crossing the border or when engaging in commercial fishing operations in its waters. The applicants' request to hear witnesses had been meant merely to prove the established practice of the Croatian police in the disputed border area.

107. The Government argued that the Croatian Government's submissions regarding the delimitation of the maritime border between the two States (see paragraph 108 below) were contrary to the applicable international law. The domestic law to which the Croatian Government had referred as the basis for the determination of the border was, in the Government's view, a unilateral resolution which Slovenia had not endorsed. In their view, Croatia did not have sovereignty over the territory where the applicants had been caught fishing.

(c) The Croatian Government

108. The Croatian Government argued that the applicants had been found guilty of offences relating to their fishing activities in Croatian territorial waters, submitting that the Arbitration Award was not binding on Croatia and that the border between Slovenia and Croatia had not changed since 1991. They affirmed, however, that it was not the Court's task to rule on the applicants' criminal liability, which was primarily a matter to be resolved by the domestic courts.

109. The Croatian Government argued that the applicants had had no knowledge of certain evidence that had been used against them. Without knowledge of that material, they could not have been expected to review the case file. In any event, the right to access the case file was a procedural right, not a remedy. As regards the oral hearing, the Croatian Government submitted that the facts of the applicants' cases had not been established by objective means, but rather through the personal observations of the police officer and fisheries inspector. In particular, the use of photographs and video-recordings could not be considered an objective method, as it still required identification of the perpetrators. Since the applicants disputed that their identities had been properly established, their right to a fair trial had

been violated on account of the lack of an oral hearing and the lack of sufficient reasons for the refusal of their requests to that effect. Referring to *Murtazaliyeva v. Russia* ([GC], no. 36658/05, 18 December 2018), the Croatian Government argued that the applicants' requests to examine witnesses had been reasonable, and that the witnesses' testimony would have been relevant to the applicants' argument that the identity of the alleged perpetrators had not been properly established and that the presence of Croatian police vessels excluded their own liability. They further argued that the domestic courts had relied on the finding that the applicants had prevented their identification by escaping; however, these findings should have been open to challenge at an oral hearing. The same applied to the findings concerning the presence and role of the Croatian police vessels, particularly with respect to the second applicant, who had been accused of obstructing the fisheries inspector's access to his boat. In the Croatian Government's view, the Local Court had not provided "any real reasons" for rejecting the applicants' requests to hear the proposed witnesses.

2. The Court's assessment

(a) Scope of the complaint

110. With a view to delimiting the scope of the case before the Court (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023), the Court notes that the complaint concerning the lack of an oral hearing raised before it is focused on, and limited to, the issue of identification of the applicants as the perpetrators of the offences in question. In the proceedings before the Court the applicants complained that the Local Court had not heard them and verify whether the video-recordings showed them. They argued that the Local Court had refused to examine witnesses against them and witnesses on their behalf, which they had requested in order to clarify their contested identification as the perpetrators of the offences in question. Neither applicant complained before the Court that a hearing had been necessary to challenge other findings of the police, such as the presence and role of the Croatian police vessels, though these were the findings to which they referred when requesting a hearing in their requests for judicial protection (see paragraphs 15, 18 and 19 above).

111. The applicants raised a second complaint arguing that they had been unaware of some of the evidence on which their convictions had been based, preventing them from defending themselves effectively. In this connection, they both referred to "official records and other databases" and "other procedures and public media" as the sources allegedly used to establish their identities. They further made the following arguments in this connection:

(i) The first applicant alleged that the Local Court's judgment relied on the police officers' official note which had not been provided to her. She

specified in her observations that the payment order had not mentioned the vessel search engine or police record to which that official note referred.

(ii) The second applicant submitted that the photographs referred to in the payment order issued against him had not been served on him, and that no information had been included in it regarding the social media allegedly used to identify him. He had also been unaware that the information regarding the ownership of the vessel registered as 49-UM had been used as evidence.

112. Lastly, the Court considers it important to emphasise that the validity and legal effects of the Arbitration Award in the relations between Slovenia and Croatia do not fall within the scope of the present applications. The Court is therefore neither called upon to determine those questions nor does it express any view on them. Its examination is confined exclusively to whether the minor-offence proceedings brought against the applicants complied with the procedural guarantees of Article 6 of the Convention.

(b) General principles

113. The Court reiterates that while entrusting the prosecution and punishment of minor offences to administrative authorities is not inconsistent with the Convention, the person concerned must have an opportunity to challenge any decision made against him or her before a tribunal that offers the guarantees of Article 6 (see *Flisar*, cited above, § 33; *Lauko v. Slovakia*, 2 September 1998, § 64, *Reports of Judgments and Decisions* 1998-VI; and *Produkcija Plus Storitveno podjetje d.o.o.*, cited above, § 51). It further reiterates that an oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 (see *Findlay v. the United Kingdom*, 25 February 1997, § 79, *Reports* 1997-I), and where an applicant has an entitlement to have his or her case "heard", with the opportunity, *inter alia*, to give evidence in his or her own defence, hear the evidence against him or her, and examine and cross-examine the witnesses (see *Jussila v. Finland* [GC], no. 73053/01, § 40, ECHR 2006-XIV).

114. That said, the Court notes that the obligation to hold a hearing is not absolute in all cases falling under the criminal head of Article 6 (see, among other authorities, *Sancaklı v. Turkey*, no. 1385/07, § 44, 15 May 2018).

115. Drawing a parallel with its approach in civil cases, the Court has considered that the kind of circumstances which may justify dispensing with an oral hearing essentially depends on the nature of the issues to be dealt with by the competent court – in particular, whether these raise any question of fact or law which could not be adequately resolved on the basis of the case file (see *Sancaklı*, cited above, § 45).

116. In this connection, the Court points out that it has already assessed summary proceedings concerning administrative offences and found that, given that the accused has the opportunity to present arguments in favour of

a hearing in his or her request for judicial protection, a system that leaves the decision as to the need to hold an oral hearing to the judge's discretion is not *per se* incompatible with the guarantees enshrined in Article 6 (see *Suhadolc*, cited above). The Court has found the decision not to hold a hearing to be justified in cases concerning traffic offences such as speeding and driving under the influence of alcohol, where the issues at stake were of a rather technical nature (ibid.). On the other hand, it has repeatedly stressed that an oral hearing will be required when there are issues of credibility or contested facts which necessitate an oral presentation of evidence or cross-examination of witnesses or when the accused has not been given an adequate opportunity to put forward his or her case in writing and to challenge the evidence against him or her (see *Flisar*, cited above, § 35; and also see and contrast *Jussila*, cited above, §§ 41-42 and 47-48; and *Andria Oy and Kari Karanko v. Finland* (dec.), no. 61557/00, 13 March 2007). In this connection, the Court has considered that when police officers' observations are the sole basis for a conviction, an oral hearing may be essential for the protection of the accused's interests in that it can put the credibility of the officers' findings to the test (see *Milenović v. Slovenia*, no. 11411/11, § 32, 28 February 2013). It has further specified that apart from the nature of the offence, the need for an oral hearing will depend on the arguments presented by the accused (see *Berdajs v. Slovenia* (dec.), no. 10390/09, 27 March 2012; *Marguč,* cited above; and *Flisar*, cited above, § 39).

117. The above considerations are not limited to the issue of the lack of an oral hearing but may be extended to other procedural requirements covered by Article 6 (see *Marčan v. Croatia*, no. 40820/12, § 35, 10 July 2014).

118. As regards the right to adversarial proceedings and the guarantees enshrined in Article 6 § 3 (b), the Court further refers to the principles summarised in *Leas v. Estonia* (no. 59577/08, 6 March 2012), which read as follows:

> "77. It is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. 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 (*Brandstetter v. Austria*, 28 August 1991, §§ 66-67, Series A no. 211). In addition, Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused (see, *mutatis mutandis*, *Rowe and Davis* [[GC], no. 28901/95], § 60 [ECHR 2000-II]).
>
> 78. However, the entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused (*Doorson v. the Netherlands*, 26 March 1996, § 70, Reports of Judgments and Decisions 1996-II) ... However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1 (see *Van Mechelen and*

Others v. the Netherlands, 23 April 1997, § 58, Reports 1997-III). Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see, *mutatis mutandis*, *Rowe and Davis*, cited above, § 61, with references to the above-cited cases of *Doorson and Van Mechelen*).

...

80. More specifically, Article 6 § 3 (b) guarantees the accused 'adequate time and facilities for the preparation of his defence' and therefore implies that the substantive defence activity on his behalf may comprise everything which is 'necessary' to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996, and *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008). Furthermore, the facilities which should be enjoyed by everyone charged with a criminal offence include the opportunity to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings (see *C.G.P. v. the Netherlands* (dec.), no. 29835/96, 15 January 1997, and *Foucher v. France*, 18 March 1997, §§ 26-38, *Reports* 1997-II). The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case (see *Galstyan v. Armenia*, no. 26986/03, § 84, 15 November 2007, and *Dolenec v. Croatia*, no. 25282/06, § 208, 26 November 2009).

81. Failure to disclose to the defence material evidence which contains such particulars as could enable the accused to exonerate himself or have his sentence reduced would constitute a refusal of facilities necessary for the preparation of the defence, and therefore a violation of the right guaranteed in Article 6 § 3 (b) of the Convention (see *C.G.P.*, cited above). The accused may, however, be expected to give specific reasons for his request (see *Bendenoun v. France*, 24 February 1994, § 52, Series A no. 284) and the domestic courts are entitled to examine the validity of these reasons (see *C.G.P.*, cited above; *Natunen v. Finland*, no. 21022/04, § 43, 31 March 2009; and *Janatuinen v. Finland*, no. 28552/05, § 45, 8 December 2009)."

(c) The Court's assessment in the present case

119. The Court notes that the applicants' cases were dealt with under the Minor Offences Act using the summary procedure provided for by that Act (see paragraphs 7 and 44 above). It has previously found, in respect of such procedures, that leaving the decision whether to hold a hearing to the judge's discretion was not *per se* incompatible with the guarantees of Article 6 (see paragraph 116 above). The Court further observes that the applicants were informed of their fines by means of payment orders, which they could, and did, challenge in the proceedings before the Local Court. That court was competent to examine questions of both the law and facts of their cases and could hold a hearing and examine witnesses and other evidence if the judge in charge considered this necessary (see paragraph 48 above).

120. The Court reiterates its well-established position that the requirements of a fair trial under Article 6 must be assessed in the light of the proceedings as a whole, although a single factor may exceptionally be decisive for the assessment of fairness. In this connection, the Court has also

consistently held that the minimum rights set out in Article 6 § 3 are specific aspects of the general right to a fair trial under Article 6 § 1 and serve to safeguard the overall fairness of the criminal proceedings (see, among many other authorities, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 251, 13 September 2016).

121. On that basis, having regard to the relevant principles (see paragraphs 113 to 118 above), and confining itself to the scope of the applicants' complaints as raised before it (see paragraphs 110 and 111 above), the Court shall proceed to examine whether the Local Court's discretion as to the conduct of the summary minor-offence proceedings, in particular as regards the holding of a hearing and examining evidence, was in the present case exercised in a way which was compatible with the requirements of Article 6 (see *Marguč*, cited above).

122. The Court notes at the outset that, while both applicants acknowledged having regularly fished in or around the area of concern (see paragraphs 14 and 18 above), they did not admit to having been involved in the events in question. The Court further observes that the case file does not enable it to assess the relevance of the information regarding the ownership of the two vessels involved for the applicants' conviction. In this connection, the Court refers, with respect to the first applicant, to the mention of the public vessel database contained in the official note (see paragraph 24 above); and, with respect to the second applicant, to the official note and the ambiguous reasoning of the Local Court (as summarised in paragraphs 25 and 28 above). However, the Government themselves argued that in the domestic proceedings, the perpetrators' identities had not been determined on the basis of the ownership of the two vessels involved (see paragraph 104 above).

123. Bearing this in mind, the Court notes certain significant differences in the factual circumstances underlying the applicants' complaints, particularly concerning the evidence supporting their respective convictions. These differences must be taken into account in the Court's assessment of whether an oral hearing was required and whether the guarantees enshrined in Article 6 § 3 (b) and (d) were respected. It will therefore proceed to examine the applicants' complaints separately.

(i) The first applicant

124. The Court observes that the domestic case file concerning the first applicant contained radar images and photographic material showing recognisable individuals (see paragraph 24 above). The first applicant was aware that her identification as the perpetrator of the offence was based on the personal observations of a police officer, as well as on photographic and video material, as this was noted in the payment order, which she undisputedly received (see paragraph 8 above). The material in question formed part of the case file to which she had access and was forwarded to the Local Court with her request for judicial protection (see paragraphs 23, 24

and 53 above; compare *Marčan*, cited above, § 45). Given that the first applicant was represented by a lawyer who should have been familiar with the relevant rules governing access to the case file in such cases (see paragraph 53 above), the Court cannot accept her argument that she should have been informed of this possibility in the payment order.

125. The Court observes that at no stage in the proceedings did the first applicant expressly deny that she was in the photographs (compare, *mutatis mutandis*, *Marčan*, cited above, §§ 45 and 46; *Berdajs*, cited above; and *Sancaklı*, cited above, §§ 48 and 51). Therefore, and having regard to the finding that her conviction was based on, *inter alia*, photographic material included in the file to which she had access and which was submitted to the Local Court for its consideration (see paragraphs 8, 24 and 27 above), the Court considers that it was legitimate for that court to have regard to the demands of efficiency and economy and to dispense with an oral hearing in the proceedings against her (see *Jussila*, § 42, and *Sancaklı*, § 45, both cited above).

126. As regards the first applicant's remaining complaints regarding the non-disclosure or lack of specificity of the evidence on which her conviction was based, the Court notes that there is no reference to "other procedures and public media" (see paragraphs 99 and 111 above) in the decisions issued in the proceedings against her. However, the official note, which was in the domestic case file and sent to the Local Court with her request for judicial protection, refers to the public vessel database, police records, "published articles" and "previous proceedings against her" (see paragraph 24 above). The Local Court's judgment against her refers to "official records and other databases", without specifying what these were (see paragraph 26 above).

127. The Court further observes that the first applicant did not challenge the reference in the official note to "published articles" and "previous proceedings against her" in the domestic proceedings, nor did she provide any explanation in this regard (see paragraph 24 above). However, in her appeal against the Local Court's judgment she argued that the general nature of the reference in that judgment to "official records and other databases" had made it impossible for her to effectively challenge these findings (see paragraph 31 above). The Court notes that these references were indeed lacking in precision. However, given the content of the official note included in the domestic case file, they appear to have concerned the public vessel database and police records (see paragraph 24 above). Indeed, the first applicant specifically complained that the public vessel database and police records had not been referred to in the payment order (see paragraphs 99 and 111 above). The Court further notes that, under domestic law, the Local Court was required to inform the accused of any evidence on which it intended to rely but on which the accused had not been able to comment (see paragraph 47 above). However, it cannot ignore the fact that the first applicant's submissions in the domestic proceedings were somewhat general,

and that she failed to put forward specific arguments challenging this evidence. Nor did she claim that she had attempted to consult the domestic case file to inspect the official note, either before or at least after becoming aware of the evidence in question, namely after the Local Court's judgment and prior to lodging her appeal (see paragraph 102 above).

128. The Court moreover notes that the requirements of a fair trial under Article 6 must be assessed in the light of the proceedings as a whole (see paragraph 120 above). It observes that the significance of the above-mentioned evidence cannot be assessed independently of the evidential value of the photographs, which, as previously noted, the first applicant did not challenge.

129. Lastly, in so far as the first applicant complained that witnesses she had proposed had not been examined (see paragraphs 76, 98 and 110 above), the Court notes that she requested the examination of witnesses only with a view to establishing the circumstances regarding the presence and actions of the Croatian police vessel in the incident to which the payment order related (see paragraph 15 above). Her request to hear witnesses was refused by the Local Court, which found that the question whether she had been accompanied by the Croatian police was not disputed and would not in any way change the outcome of the proceedings (see paragraph 30 above). In the proceedings before the Court, she specifically complained about the Local Court's failure to hear witnesses with respect to her identification as the perpetrator of the offence (see paragraph 98 above), which is something that, as mentioned above, she did not request before that court. In view of the foregoing and its finding that it was justified in the particular circumstances of this case to dispense with an oral hearing, the Court considers that the Local Court cannot be reproached for failing to hear witnesses for the purposes of ascertaining the identification of the first applicant (see, *mutatis mutandis*, *Marčan*, cited above, § 44, and *Aubrecht v. Slovenia* (doc.), no. 57653/08, 10 January 2012; contrast *Milenović*, cited above, § 31).

130. Having regard to the above, as well as to the entirety of the first applicant's arguments and the conduct of the proceedings as reflected in the domestic case file, the Court finds that there has been no violation of Article 6 §§ 1 and 3 (b) and (d) of the Convention in her case. It is therefore unnecessary to examine the Government's preliminary objection joined to the merits (see paragraph 96 above) in so far as it relates to her.

(ii) The second applicant

131. The Court observes that despite the domestic courts' reference to photographs showing the offender involved (see paragraphs 28 and 35 above), the visual material included in the second applicant's domestic case file does not show any recognisable individual (see paragraph 25 above). Therefore, and given the Government's argument that his conviction was not based on his being the owner of the vessel (see paragraph 104 above), the

charges against him appear to have been essentially based on the fisheries inspector's direct observations (see paragraphs 10-11 above). This should have been evident to the Local Court tasked with reviewing the second applicant's conviction because it had access to his case file and ought to have been aware of the limited probative value of the photographs, all the more so given that he, in his request for judicial protection, expressly requested the court to examine the photographs (see paragraphs 18 and 23 above).

132. Given that the second applicant's conviction was based on the officers' direct observations, an oral hearing was essential for the protection of his interests in that it could put the credibility of the officers' findings to the test (see *Milenović*, cited above, § 32). This is so even if he made no explicit request for a hearing on this particular point, as under domestic law it fell to the judge to determine, in the light of the specific circumstances of the case, whether holding a hearing and examining witnesses was necessary (see paragraph 48 above; see also *Flisar*, cited above, § 37).

133. Therefore, and also bearing in mind that the second applicant, who had been repeatedly involved in such proceedings, potentially faced imprisonment in the event of non-payment of the fines (see paragraphs 6, 10 and 52 above), the Court is of the view that, as a matter of fair trial, the Local Court could not have properly determined the facts or his guilt without a direct assessment of the evidence at an oral hearing (see, *mutatis mutandis*, *Flisar*, cited above, § 39; *Milenović*, cited above, § 32; and, for illustrative purposes, *Kastelic v. Slovenia* [Committee], no. 25326/11, § 27, 19 June 2014).

134. The Court further observes that the second applicant also argued that he had been unaware of some of the evidence used against him and had therefore been unable to effectively mount a defence (see paragraphs 99, 101 and 111 above). The Court refers to the principles summarised above (see paragraph 118 above) and stresses that respect for the rights of the defence requires that an applicant be given an opportunity to challenge the authenticity of the evidence and oppose its use, in circumstances where the principles of adversarial proceedings and equality of arms between the prosecution and the defence are respected (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 324, 26 September 2023).

135. The description of the factual circumstances of the offence concerning the second applicant referred to "social media posts" as evidence against him, without providing any further details in this regard (see paragraph 11 above). The Court finds no details in the domestic case file held by the Fisheries Inspectorate and forwarded to the Local Court (see paragraph 25 above) specifying the social media posts in question. The second applicant, in the proceedings before the Local Court, drew attention to the lack of specification of the evidence in question; however, his argument was left unaddressed (see paragraphs 18 and 28 above). The Court further observes that the Higher Court referred to his "media appearances" (see

paragraph 35 above) as evidence relied on by the fisheries inspector. However, there are no further details specifying this evidence. Moreover, this evidence only appeared for the first time in the Higher Court's judgment, meaning the second applicant was already unable to effectively challenge it owing to its late introduction. The Government did not argue, and nothing in the case file indicates, that the lack of specificity of the aforementioned evidence and the resulting restriction of the rights of the defence were meant to serve any legitimate competing interests (for the relevant principles, see paragraph 118 above).

136. The Government argued, with respect to the above-examined aspects, that the second applicant should have consulted the case file prior to lodging his request for judicial protection and should have subsequently raised doubts, supported by specific arguments and evidence, as to the findings made by the minor-offence authorities – a position which also seems to have been endorsed by the domestic courts in the present case (see paragraphs 28, 34, 35, 78 and 103-105 above). Yet the Government have not explained what useful purpose such a step on the second applicant's part could have served, given that the material in the case file did not reveal a recognisable individual and contained no documents or details showing the social media posts relied on. In so far as the Government referred to this as the second applicant's procedural misstep, the Court finds nothing in the domestic law to suggest – let alone with a sufficient degree of foreseeability – that the absence of prior consultation of the case file would have prevented the accused from disputing the findings of the minor-offence authorities in court proceedings and/or from receiving an adversarial hearing. Likewise, it is noted, by way of observation, that the domestic law does not appear to unequivocally suggest that an oral hearing should be granted only on the presentation of evidence capable of undermining the findings of a minor-offence authority (see, in particular, paragraphs 48, 67, 69 and 73 above).

137. The Court accordingly finds that the Government's submissions do not undermine its conclusion that the second applicant was deprived of his right to an oral hearing. It also finds that he was not in a position to effectively mount his defence owing to the domestic authorities' failure to specify and/or notify him in a timely manner of the evidence referred to paragraph 135.

138. In the light of the foregoing, the Court finds that the proceedings against the second applicant did not satisfy the requirements of Article 6 §§ 1 and 3 (b) of the Convention. The Government's preliminary objection joined to the merits (see paragraph 96 above) – in so far as it relates to him – must therefore be dismissed. In view of the above finding and the domestic courts' conclusion that an oral hearing could be dispensed with, the Court considers that it is not necessary to examine separately whether the second applicant's right under Article 6 § 3 (d) was violated by reason of the domestic court's refusal to examine witnesses against him and witnesses on his behalf (see

paragraphs 76, 98 and 110 above; see also, *mutatis mutandis*, *Kallio v. Finland*, no. 40199/02, § 52, 22 July 2008, and *Hannu Lehtinen v. Finland*, no. 32993/02, § 50, 22 July 2008).

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

139. Article 46 of the Convention provides as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

140. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent States a legal obligation to apply, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the applicants' rights which the Court found to be violated (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 142, ECHR 2014, and *H.Q. and Others v. Hungary*, nos. 46084/21 and 2 others, § 163, 24 June 2025).

A. Individual measures to be taken in respect of the second applicant

141. The finding of a violation made with respect to the second applicant entails an obligation on the respondent State to take appropriate measures to remedy the infringements of his rights. The reopening of the domestic proceedings, if requested, would be the most appropriate way of putting an end to the violations found in the present case and of affording redress to the second applicant (see *Yüksel Yalçınkaya*, cited above, § 412). The Court notes in this connection that the Minor Offences Act allows for a request for the protection of legality to be filed by the perpetrator of a minor offence or his or her defence counsel within three months from the date on which a judgment of the European Court of Human Rights finding a breach of his or her Convention rights becomes final (see paragraph 51 above). It reiterates that while the choice of means to discharge their legal obligations remains at the discretion of the Government, the means should be compatible with the conclusions and spirit of the Court's judgment (see *Sejdovic v. Italy* [GC], no. 56581/00, § 127, ECHR 2006-II, and *Yüksel Yalçınkaya*, cited above, § 412).

B. Whether the Court should indicate general measures

1. The parties' arguments

(a) The second applicant

142. The second applicant submitted that his situation reflected a systemic problem of a lack of an oral hearing in proceedings initiated by Croatian fishing workers fined by the Slovenian authorities.

143. Of 3,109 cases in which Croatian fishing workers, represented by the same law firm as the second applicant, had been fined either by the police or by a fisheries inspector, hearings had been scheduled in only eleven. In five of these eleven cases, the hearing had not been conducted by a judge, but by a legal officer, and the inspector who had made the incriminating statements had not been summoned to the hearing. The second applicant also submitted that the fines imposed on fishing workers now totalled "tens or even hundreds of thousands of euros" per fishing worker and that he and other Croatian fishing workers therefore avoided travelling to Slovenia for fear of being arrested. The second applicant further submitted that, if the general figures provided by the Government (see paragraph 144 below) were indeed reliable, he had been subjected to discrimination because in the cases like his it was significantly rarer to have a hearing compared to the general figures.

(b) The Government

144. The Government submitted that between 2018 and 2023 oral hearings, including those involving witness examination, had been held in approximately 44% of cases concerning requests for judicial protection against payment orders or minor-offence decisions (the lowest being 34% in 2020 and the highest being 57% in 2023). There was also an extended possibility of appeal, introduced in 2024 following an amendment to the Minor Offences Act (see paragraph 50 above). The Government further submitted that Croatian fishing workers had been represented by the same law firm, and that their requests for judicial protection were very similar and template-like. It was therefore reasonable for the court decisions dealing with such remedies to be similar as well. This, after all, was also required for the sake of consistency. There were no specific statistics as to how many oral hearings and witness examinations had been conducted in cases involving Croatian fishing workers. The Government concluded that Slovenia could not be considered to have systemically violated the rights of Croatian fishing workers.

145. The Government further submitted that the Committee of Ministers of the Council of Europe had adopted final resolutions, finding that Slovenia had adopted adequate measures in the previous cases against Slovenia in which the Court had found a violation on account of the lack of an oral hearing in minor-offence proceedings, the latest being the final resolution

related to the judgment in *Letonje v. Slovenia* (no. 10397/20, 6 July 2023), CM/ResDH(2024)38 of 14 March 2024.

(c) The Croatian Government

146. The Croatian Government argued that, despite numerous findings of violations against Slovenia concerning the subject matter of this case, the practice of Slovenian courts dealing with minor offences had not improved. The existing legislative framework was unable to prevent similar violations, and the case-law of the Constitutional Court and the Supreme Court did not offer appropriate procedural safeguards. As a result, a large number of people had had no choice but to resort to proceedings before the Court, which was at odds with the principle of subsidiarity. The Croatian Government argued that the problem was of a recurrent and structural nature and had resulted in a high number of similar cases being lodged against Slovenia by Croatian nationals. In this connection, they also submitted that, given the statistics provided by the Slovenian Government and the second applicant, the very low percentage of oral hearings conducted in minor-offence proceedings involving Croatian fishing workers (0.325%), compared to the percentage of hearings held in minor-offence proceedings in general (34% to 57% between 2018 and 2023) further showed the systemic nature of the violations. They invited the Court to order the respondent State to adopt additional general measures in this regard. The Croatian Government also argued that following Croatia's accession to the Schengen Area in January 2023, the Slovenian authorities had continued to impose sanctions on Croatian fishing workers, which, in their opinion, demonstrated the likelihood of continued breaches of the Convention rights of Croatian fishing workers in the future.

2. The Court's assessment

147. The Court observes that over 800 cases have been lodged against Slovenia by individuals who were fined by the Slovenian authorities because of their fishing activities in the area of concern, all of whom raise similar complaints concerning, *inter alia*, the lack of an oral hearing. These cases concern over 1,000 sets of proceedings. Moreover, it appears from the second applicant's submissions that there may be over 3,000 similar cases – possibly including those already pending before the Court – in which Croatian fishing workers, represented by the same law firm as the applicants, were fined either by the police or by a fisheries inspector (see paragraph 143 above). The Court notes, however, that in the present case it has found a violation of Article 6 §§ 1 and 3 (b) of the Convention only in respect of the second applicant, while no violation has been found in respect of the first applicant. The finding of a violation is based on the specific circumstances relating to the proceedings against the second applicant. The Court does not have sufficient information to determine whether, or to what extent, the remaining cases against Slovenia

raising similar complaints are based on circumstances comparable to those which led it to find a violation of Article 6 §§ 1 and 3 (b) of the Convention in respect of the second applicant. It therefore does not find it appropriate to indicate any general measures in the present judgment. However, it may consider such a course of action appropriate should a systemic issue be identified in this regard in the future.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The second applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. He referred, in particular, to the potential conversion of unpaid fines into imprisonment and to the restriction on his freedom of movement, as he was unable to travel to Slovenia owing to the risk of being imprisoned.

150. The Government disputed the second applicant's claims and argued that there was no indication that, to date, his fines had been converted into imprisonment. In their view, he could not be considered to have been restricted in his movement.

151. The Court reiterates that the awarding of sums of money to applicants by way of just satisfaction is not one of its main duties, but is incidental to its task under Article 19 of the Convention of ensuring the observance by States of their obligations under the Convention (see *Nagmetov v. Russia* [GC], no. 35589/08, § 64, 30 March 2017). The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest (see *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, § 32, 18 June 2020, with further references). Depending on the circumstances, the Court may also consider the finding of a violation to constitute sufficient just satisfaction and thus dismiss related claims (see *Yüksel Yalçınkaya*, cited above, § 422).

152. As regards non-pecuniary damage, the Court acknowledges that the second applicant may have suffered some distress and anxiety on account of the violations found. However, it also notes, as indicated in the context of its findings under Article 46 (see paragraph 141 above), that the retrial, in accordance with the requirements of the Convention provisions at issue in the present case, would in principle constitute the most appropriate form of redress, should the second applicant choose to request this. The Court

accordingly considers that the finding of a violation can be regarded as sufficient just satisfaction for the second applicant, and thus rejects his claim under this head (compare *Flisar*, § 47, and *Yüksel Yalçınkaya*, § 425, both cited above, as well as *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 301, 1 December 2020). However, should the second applicant be unable to obtain retrial in accordance with the requirements of the Convention, this may lead the Court to make a monetary award in respect of non-pecuniary damage in future similar cases (see, *mutatis mutandis*, *Zelenchuk and Tsytsyura v. Ukraine*, nos. 846/16 and 1075/16, § 157, 22 May 2018).

B. Costs and expenses

153. The second applicant claimed EUR 4,592 in respect of the costs incurred in the domestic proceedings and in those before the Court. He submitted that these costs had been paid by the Croatian Government, but that he was obliged to repay them if he were successful with his application and awarded their reimbursement (see paragraph 39 above).

154. The Government argued that the second applicant had not incurred any costs in the domestic proceedings or those before Court, since these had been paid by the Croatian Government. They submitted that, in any event, the amounts claimed by him were grossly excessive.

155. 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. In particular, the Court has held that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Mortier v. Belgium*, no. 78017/17, § 214, 4 October 2022).

156. The Court notes that it is undisputed that the Croatian Government paid the costs of the domestic proceedings and those before the Court in full, pursuant to the assumption agreements concluded with the second applicant (see paragraph 39 above). It appears from the documents submitted by the second applicant that some of the invoices for his legal representation were billed directly to the Croatian Ministry of Justice (compare *Becker v. Norway*, no. 21272/12, § 91, 5 October 2017, and *Voskuil v. the Netherlands*, no. 64752/01, § 92, 22 November 2007) while others were addressed to the second applicant but nonetheless paid by the Croatian Government. As regards the latter, the Court finds it important to note that the documents in the case file indicate that the Croatian Government's payment of the costs of the second applicant's representation and related expenses was based on its contractual obligation to cover such costs (contrast *A.D. v. Malta*, no. 12427/22, §§ 216-20, 17 October 2023, in which the legal representatives sought private funding to cover the costs). It further observes that the law firm Kozinc and Partners sought payment of their costs related to the second

applicant's representation and the costs related to the work by the law firm Travaš and Partners in the proceedings before the Court directly from the Croatian Ministry of Justice (see paragraph 40 above).

157. The Court therefore considers that the second applicant did not incur the costs claimed before it. As to his reliance on the clause in the assumption agreement with the Croatian Government that he would reimburse the latter for any sums received by way of costs and expenses (see paragraphs 153 and 39 above), this clause cannot be considered to have created an entitlement to the reimbursement of costs in the proceedings before the Court.

158. The second applicant's claim under this head must accordingly be rejected.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Decides,* unanimously, to join to the merits the preliminary objection concerning the exhaustion of domestic remedies;

3. *Declares*, unanimously, the applications admissible;

4. *Decides*, unanimously, that it is not necessary to examine the preliminary objection concerning the exhaustion of domestic remedies in respect of the first applicant, and dismisses it in respect of the second applicant;

5. *Holds*, by five votes to two, that there has been no violation of Article 6 §§ 1 and 3 (b) and (d) of the Convention in respect of the first applicant;

6. *Holds*, unanimously, that there has been a violation of Article 6 §§ 1 and 3 (b) of the Convention in respect of the second applicant;

7. *Holds*, unanimously, that it is not necessary to examine separately whether the second applicant's right under Article 6 § 3 (d) was violated by reason of the domestic court's refusal to examine witnesses;

8. *Holds*, unanimously, that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the second applicant;

9. *Dismisses*, unanimously, the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Ioannis Ktistakis
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Ktistakis and Mingorance Cairat is annexed to this judgment.

JOINT PARTLY DISSENTING OPINION OF JUDGES KTISTAKIS AND MINGORANCE CAIRAT

(Translation)

We concur with the finding of a violation of Article 6 §§ 1 and 3 (b) of the Convention in respect of the second applicant. By contrast, we do not agree with the finding of no violation of that provision in respect of the first applicant. We consider that the shortcomings in the proceedings in respect of the second applicant also infringed the first applicant's procedural rights.

The applicants admitted that they regularly fished in or around the area in question. They did not, however, admit to having been involved in the specific offences with which they had been charged. On the contrary, they disputed the manner in which the authorities had identified them as the perpetrators of the offences in issue.

In that connection, the payment orders issued to the applicants did not include copies of any evidence and did not enable the documents on which their identification had been based to be determined with sufficient precision. Some evidence was described using only generic terms, such as "official records and other databases", "photographs/video-recordings/radar images", "published articles" and "previous proceedings".

In these circumstances, the decisive element for the prosecution was the identification made by the officials who had observed the offences. Since the applicants disputed the lawfulness and reliability of that identification, the issue raised was not of a purely technical nature. It related to a fact essential for the establishment of their liability and called for a direct assessment of the evidence. The applicants should therefore have been able to take part in a hearing, present their own version of the events and, if appropriate, question the officials on whose statements their convictions were based (see *Flisar v. Slovenia*, no. 3127/09, § 39, 29 September 2011, and *Milenović v. Slovenia*, no. 11411/11, § 32, 28 February 2013).

Admittedly, the applicants, who were assisted by a lawyer, were in principle able to consult the case file. This abstract possibility cannot, however, be regarded as sufficient. It was primarily for the authorities to indicate to the applicants, with adequate precision and in good time, the evidence actually used to establish their identity. The applicants could not be required to challenge in detail pieces of evidence of whose existence or exact nature they were unaware, or to determine for themselves, from among the various pieces of evidence contained in the case files, those on which the authorities actually intended to base the penalty.

Nor can we consider that the absence of prior consultation of the case file amounted to a waiving of the guarantees under Article 6. Such a waiver would have needed to have been established in an unequivocal manner and surrounded by safeguards commensurate to its importance. The applicants

did, however, expressly raise questions about their identification and request that the visual evidence be re-examined. Their conduct in the proceedings did not therefore warrant the conclusion that they had waived the right to challenge the probative value of the evidence.

The domestic courts nevertheless criticised the applicants for not having made sufficiently precise and substantiated arguments, while refusing to hold a hearing and to examine directly the evidence on which their identification had been based. This approach placed them in a vicious circle: they were required to precisely state their defence in order to have the evidence examined, yet they needed to know and be able to challenge that evidence in order to mount their defence effectively.

This shortcoming was not remedied at any stage of the proceedings. When the applicants lodged requests for judicial protection in order to challenge their identification and to have the evidence against them examined, their requests were dismissed without a hearing. They thus had no practical and effective opportunity to acquaint themselves, in good time and with sufficient precision, with the decisive elements of the case against them, to challenge their evidential value in adversarial proceedings and to prepare their defence effectively.

Regard should also be had to the fact that the proceedings in question were criminal in nature. As regards, at the very least, the second applicant, his repeated involvement in similar proceedings exposed him, in the event of non-payment of the fines, to the risk of imprisonment. Even though the offences in question were minor, their potential consequences further reinforced the need for effective respect of the procedural safeguards.

We therefore conclude that the proceedings concerning the first applicant, like those concerning the second, did not satisfy the requirements of Article 6 §§ 1 and 3 (b) of the Convention. We further consider that, as regards the first applicant, the refusal to examine witnesses whose statements or findings were likely to have been decisive for her identification also infringed the requirements of Article 6 § 3 (d).