



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

Legal summary

October 2026

Makovac and Latin v. Slovenia - 15525/23 and 15532/23

Judgment 6.10.2026 [Section III]

Article 6

Criminal proceedings

Article 6-1

Public hearing

Oral hearing

Article 6-3-b

Preparation of defence

Article 6-3-d

Examination of witnesses

Justified dispensation with an oral hearing and with taking witness evidence for ascertaining the first applicant's guilt: *no violation*

The second applicant's guilt could not be properly determined without assessing the evidence at an oral hearing: *violation*

Facts – The applicants, Croatian nationals, were fined by the Slovenian authorities in March 2018 and respectively February 2020 for minor offences related to their commercial fishing activities in the area of Bay of Piran ("the area of concern"). The payment orders issued in accordance with the summary procedure set out in the Minor Offences Act relied on "the personal observation of the police officer [B.K.] and a video-recording/photographs/radar images" (for the first applicant) and on the "direct observations of the [fisheries] inspector and photographs" as well as "social media posts" (for the second applicant). The presence of Croatian police vessels was also mentioned.

The applicants, represented by a law firm, filed requests for judicial protection against the payment orders, contesting that they had been fishing in the area of concern at the given time and requesting the hearing of witnesses. The Local Court dismissed both requests without holding an oral hearing and 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. As regards the request 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.

The applicants' appeals were dismissed by the Higher Court which noted that the applicants' allegations related mostly to the question whether they had been properly identified as the offenders. In rejecting their appeals it noted that the authorities had relied on personal identification as regards the first applicant and on personal identification, photographs, his media appearances and searches of the public vessel database as regards the second applicant.

The Constitutional Court rejected the applicants' constitutional complaints.

Invoking Article 6 of the Convention, the applicants complained that they had not had an oral hearing, that they had been unable to examine witnesses and that they had been unable to effectively mount a defence as they had not been informed about some of the evidence.

Law – Article 6 §§ 1 and 3 (b) and (d):

The complaint concerning the lack of an oral hearing was limited to the issue of identification of the applicants as the perpetrators.

The applicants had been informed of their fines by means of payment orders. They had challenged these before the Local Court which was competent to examine questions of both law and facts and able to hold a hearing and examine witnesses and other evidence if considered necessary.

While both applicants had acknowledged having regularly fished in or around the area of concern, they had not admitted to having been involved in the events in question.

(1) *The first applicant* – The domestic case file had contained radar images and photographic material showing recognisable individuals. The first applicant had been aware that her identification had been based on the personal observations of a police officer, as well as on photographic and video material, as noted in the payment order. The material had formed part of the case file to which she had access and which had been forwarded to the Local Court with her request for judicial protection. She had been represented by a lawyer who should have been familiar with the relevant rules governing access to the case file.

At no stage in the proceedings had the first applicant expressly denied that she was the person appearing in the photographs. Therefore, it had been legitimate for the Local Court to have regard to the demands of efficiency and economy and to dispense with an oral hearing.

Concerning the alleged non-disclosure or lack of specificity of the evidence on which the first applicant's conviction had been based, the official note included in the case file sent to the Local Court referred to the public vessel database, police records, "published articles" and "previous proceedings" against this applicant. The Local Court's judgment referred to "official records and other databases", without specifying what those had been.

The first applicant had not challenged the reference in the official note to "published articles" and "previous proceedings against her" in the domestic proceedings, nor had she provided any explanation in that regard. However, in her appeal she had argued that the general nature of the reference in the Local Court's judgment to "official records and other databases" had made it impossible for her to effectively challenge those findings. The Court noted that those references had indeed been lacking in precision. However, given the content of the official note, they appeared to have concerned the public vessel database and police records. Indeed, the first applicant had specifically complained that the public vessel database and police records had not been referred to in the payment

order. Under domestic law, the Local Court had been required to inform the accused of any evidence on which it had intended to rely but on which the accused had not been able to comment. However, the first applicant's submissions in the domestic proceedings had been somewhat general, and she had failed to put forward specific arguments challenging that evidence. Nor had she claimed 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.

The significance of the above-mentioned evidence could not be assessed independently of the evidential value of the photographs, which the first applicant had not challenged.

Lastly, the first applicant had requested the examination of witnesses only with a view to establishing the presence and actions of the Croatian police vessel, that question being considered undisputed and irrelevant by the Local Court.

In view of the foregoing and the finding that it was justified in the particular circumstances of this case to dispense with an oral hearing, the Local Court could not be reproached for failing to hear witnesses.

Conclusion: no violation of Article 6 §§ 1 and 3 (b) and (d) (five votes to two).

(2) *The second applicant* – Despite the domestic courts' reference to photographs showing the offender involved, the visual material in the case file did not show any recognisable individual. Therefore, the charges against the second applicant appeared to have been essentially based on the fisheries inspector's direct observations. This should have been evident to the Local Court because it had access to the case file and ought to have been aware of the limited probative value of the photographs, all the more so given that the second applicant had expressly requested the court to examine the photographs.

Given that his conviction had been based on direct observations on the site of the events, an oral hearing had been essential for the protection of the second applicant's interests in that it could have put the credibility of those observations to the test. That was so even if he had made no explicit request for a hearing on that 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.

Therefore, as a matter of fair trial, the Local Court could not have properly determined the facts or the second applicant's guilt without a direct assessment of the evidence at an oral hearing.

Furthermore, the description of the factual circumstances of the offence had referred to "social media posts" as evidence, without providing any further details in this regard. There were no details in the domestic case file held by the Fisheries Inspectorate and forwarded to the Local Court specifying the social media posts in question. Before the Local Court, the second applicant had drawn attention to the lack of specification of the evidence in question but his argument had been left unaddressed. The Higher Court had referred to his "media appearances" as evidence relied on by the fisheries inspector. However, there were no further details specifying that evidence. Moreover, that evidence had only appeared for the first time in the Higher Court's judgment, meaning the second applicant had been unable to effectively challenge it.

In conclusion, the second applicant had been deprived of his right to an oral hearing and had not been 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 above.

Conclusion: violation of Article 6 §§ 1 and 3 (b) (unanimously).

In view of its above conclusion the Court did not find it necessary to examine separately whether the second applicant's right under Article 6 § 3 (d) had been violated.

Article 46:

(1) *Individual measures to be taken in respect of the second applicant* – The reopening of the domestic proceedings, if requested, would be the most appropriate way of putting an end to the violations found and of affording redress to the second applicant. The Minor Offences Act allowed 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.

(2) *Whether the Court should indicate general measures* – The Court did not have sufficient information to determine whether, or to what extent, the remaining 800 cases lodged against Slovenia by individuals fined by the Slovenian authorities because of their fishing activities in the area of concern were based on circumstances comparable to those which had led the Court to find a violation of Article 6 §§ 1 and 3 (b) of the Convention in respect of the second applicant. It did not find it appropriate therefore to indicate any general measures in the present judgment but might consider such a course of action appropriate should a systemic issue be identified in this regard in the future.

Article 41: finding of a violation sufficient in respect of non-pecuniary damage.

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

To access legal summaries in English or French click [here](#).
For non-official translations into other languages click [here](#).