



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

FIRST SECTION

CASE OF MAĐER v. CROATIA

(Application no. 56185/07)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Mader v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 56185/07) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Josip Mader (“the applicant”), on 10 December 2007.

2. The applicant was represented by Mr M. Umićević, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 19 October 2009 the President of the First Section decided to communicate to the Government the complaints concerning: both the substantive and procedural aspects of Article 3; the complaints under Article 5 §§ 1, 2 and 3; as well as the complaints under Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and is currently serving a prison term in Lepoglava State Prison.

5. The documents in the case-file reveal the following facts.

1. The applicant's arrest and police questioning

6. On 1 June 2004 at 6 a.m. six police officers from the Zagreb Police Department came to the applicant's house in Križ and asked the applicant and his wife to accompany them. The applicant and his wife complied and were taken by police car to the Zagreb Police Department (*Policijska uprava zagrebačka*).

7. Shortly after 6 a.m. they arrived at the Zagreb Police Department in Heinzlova Street and the applicant was placed in the interview room.

8. A polygraph test of the applicant was carried out on 1 June 2004 between 11 a.m. and 6.15 p.m. The file does not contain documents which could clarify the applicant's whereabouts or treatment at the police station during the initial twenty-five hours. It is undisputed, however, that the applicant remained at the police station.

9. A report on the applicant's arrest drawn up by police officers states that the applicant was formally arrested at 7 a.m. on 2 June 2004 on suspicion of murdering one V.M., and was taken into police custody for twenty-four hours under Article 97 of the Code of Criminal Procedure (see "Relevant domestic law" below). The applicant was informed of his right to a defence lawyer and lawyer E.Z. was contacted on 2 June 2004 at 10 a.m., but did not come to the police station. The applicant signed the report without making any comments.

10. In the afternoon of 3 June 2004 the dead body of V.M. was found in a vineyard near the town of Kutina, which came under the jurisdiction of the Sisak County Court. An investigating judge of the Sisak County Court carried out the on-site inspection between 12.30 p.m. and 3.30 p.m.

11. According to the official record of the applicant's police questioning in the Zagreb Police Department by police officer S.I., lawyer P.B. was called by the police at 11 p.m. on 3 June 2004 and arrived at the Zagreb Police Department at ten past midnight on 4 June 2004. The record of the questioning states that the questioning commenced at 25 minutes past midnight on 4 June 2004 and was completed at 2.30 a.m. the same day, with lawyer P.B. being present throughout. According to this record the applicant confessed that on 3 May 2004 during a fight with V.M. he had shot and killed the latter and then buried his dead body in a vineyard. The written record was signed by both the applicant and lawyer P.B. and also by S.I. and a typist.

2. Investigation and trial

12. On 4 June 2004 the Zagreb Police Department filed a criminal complaint against the applicant with the Zagreb County State Attorney's Office and the investigating department of the Zagreb County Court, on charges of murdering V.M. The same day at 6.30 p.m. the applicant was brought before an investigating judge of the Zagreb County Court, in the

presence of a defence lawyer chosen by the applicant who submitted a power of attorney to the investigating judge. The applicant decided to remain silent and merely stated that he had not called counsel P.B. to the Police Department.

13. After being heard by the investigating judge, the applicant was transferred to Zagreb County Prison. The medical record from the prison does not indicate any injuries on the applicant's arrival.

14. On 7 June 2004 the applicant was again brought before the investigating judge, in the presence of his chosen counsel, and decided to remain silent. The investigating judge then ordered that the applicant be placed under investigation for murder. The applicant was placed in detention on remand.

15. On 13 July 2004 the investigating judge ordered a psychiatric examination of the applicant in order to ascertain his ability to understand his actions at the time when the criminal offence at issue was committed and his mental state during the police questioning. The report drawn up on 21 July 2004 found that the applicant was not suffering from any disorder capable of adversely affecting his capacity to answer the questions and that during the police questioning he had been fully conscious and mentally competent. The psychiatrist who drew up the report interviewed the applicant from 15 to 20 July 2004 and also based her conclusions on the police record of the applicant's questioning. The psychiatric report was communicated to the applicant's defence counsel.

16. On 14 July 2004 an officially appointed lawyer, M.K., was assigned to the applicant, since meanwhile his chosen lawyer ceased to represent him.

17. On 29 July 2004 the applicant was committed for trial on a charge of murder in the Velika Gorica County Court (*Županijski sud u Velikoj Gorici*).

18. On 4 August 2004 the applicant asked the Velika Gorica County Court to serve the decision of 30 July 2004, ordering his continued detention, on his officially appointed counsel, M.K. He also complained that he had not yet seen his officially appointed counsel. He further alleged that as early as 1 July 2004 he had asked to consult the case file and that his request had not been answered.

19. On 13 August 2004 the Velika Gorica County Court ordered Zagreb County Prison to bring the applicant to the Velika Gorica County Court on 19 August 2004 so that he could consult the case file.

20. On 22 August 2004 the applicant asked the Velika Gorica County Court to allow him to consult the case file because on 19 August, when he had been brought to the Velika Gorica County Court, he had been given only thirty minutes to consult the file. This had not been sufficient to enable him to read even one third of the documents in the file. On 1 September

2004 the Velika Gorica County Court ordered Zagreb County Prison to bring the applicant to its premises on 6 September 2004.

21. On 27 August 2004 the applicant complained to the judge responsible for the execution of sentences who was visiting the prison that he could not properly consult the case file. On 9 September 2004 the Velika Gorica County Court again ordered Zagreb County Prison to bring the applicant on 16 September 2004 to the premises of that court so that he could consult the case file.

22. On 19 October the applicant again asked the County Court for permission to consult the case file. On 27 October 2004 the presiding judge informed the applicant that his request had been refused since he had already consulted the case file twice.

23. The first hearing before the trial court was held on 8 December 2004 in the presence of the applicant and his counsel M.K. The applicant pleaded not guilty and made no other comments.

24. On 9 December 2004 the applicant asked the Velika Gorica County Court to order another psychiatric examination which would establish whether on the morning of 4 June 2004 he had known what he was signing at the police station (see § 11 above). He asserted that he had learned about the content of the statement he had supposedly made to the police only when he had consulted the case file on 16 September 2004. He alleged that at that time he had been suffering from diabetes and high blood pressure and had not been given his medication, had not been given any food for twenty hours and had not slept from 6 a.m. on 1 June 2004 until 11 p.m. on 4 June 2004. During the entire police questioning he had been forced to sit on a chair and the record of his alleged statement which he had signed had not been read out loud to him. He could not read it himself because he had not had his glasses. Furthermore, he alleged that he had been ill-treated and still had traces of injuries and asked to be seen by a medical doctor.

25. The applicant's wife decided to avail herself of the right not to testify in the criminal proceedings against the applicant.

26. A hearing was again held on 28 December 2004 in the presence of both the applicant and his counsel. The psychiatrist who had written the report of 21 July 2004 (see § 16 above) on the applicant during the investigation gave her oral evidence. She stated, *inter alia*, that:

“... the changes in blood pressure and blood sugar levels had no effect on the defendant's ability to understand his actions. Likewise, these changes, if they happened at all, had no effect on his questioning by the police. If such changes were present, they were of a mild nature. Had there been any drastic changes, they would have caused altered levels of consciousness and possibly unconsciousness; no such occurrence was recorded in the case file.

My opinion is that the statement given to the police is sound and that there are no indications that the defendant suffered from any mental disturbances during questioning.”

27. At the end of the hearing the applicant's oral request for a further psychiatric examination aimed at establishing his mental state during the police questioning was rejected as being aimed at delaying the proceedings, since these issues had already been addressed by the psychiatrist at the hearing.

28. Further hearings were held on 3 February and 19 May 2005 in the presence of both the applicant and his counsel.

29. At the subsequent hearing held on 20 June 2005 the applicant, in the presence of his counsel, presented his defence. He denied the charges against him. As regards his questioning by the police he submitted that he remembered having been at the Zagreb Police Department but that he could not remember presenting his defence. He stated further that a lawyer had not been present although he had repeatedly asked the police officers for the questioning to be conducted in the presence of a defence lawyer. He had the telephone numbers of several lawyers listed on his mobile phone but had not been allowed to call any of them. At that time he had problems with his heart, high blood pressure and high levels of sugar and cholesterol in his blood. He remembered that he had signed something but had not known what it was. He had learned about it only on 16 September 2004 when he had consulted the case file.

30. When a power of attorney given to the lawyer P.B. was shown to the applicant he confirmed that it contained his signature.

31. He then proceeded to state that he remembered answering questions by the police officers, but could not remember what he had said. The police officers had insisted that he confess. He confirmed that the written record of the police questioning contained his signature. However, he also stated that he could not have read the documents he had signed at the police station because of his poor eyesight since during the police questioning he had had no glasses. They had been brought to him in prison on 14 June 2004.

32. With regard to the lawyer P.B., none of the police officers present had told him who that person was and P.B. had not addressed him at all. The only persons present at the police questioning had been the police officers and a young woman who typed the record of the questioning.

33. At the hearing held on 5 July 2005 the County Court heard evidence from lawyer P.B. The relevant part of his deposition reads as follows:

"I agreed to be on the list of lawyers kept by the police who are willing to be called when suspects are being questioned by the police and such questioning might be used as evidence in the criminal proceedings. I don't recall the exact date, but I remember that it was in 2004, the weather was warm and I was called sometime after midnight to go to the Zagreb Police Department in Heinzlova Street. I was told that a person suspected of murder was to be questioned and that I was needed as his defence lawyer. When I arrived I saw the accused immediately sign a power of attorney for me to represent him before the police. However, the police officers told me that the defendant had already been questioned and had confessed. I saw a handwritten record of the defendant's deposition and it was then dictated to the typist. That was the

defendant's entire statement. He did not say anything in my presence. I only asked him whether he was sorry and whether the police had treated him correctly, that is to say whether any force had been used. The defendant denied that there had been any use of force. I did not read myself the handwritten record but, since I was sitting next to the police officer, as was the defendant, I saw that the officer was dictating from that handwritten record to the typist, who was typing on a computer. I was not served with a copy of the typed record of the defendant's questioning because it is not the custom. Although the defendant had been questioned before my arrival I raised no objections in that respect. I would like to clarify that when the handwritten record was dictated to the typist, the police officer would sometimes repeat a question and ask the defendant whether it had truly been as he was dictating; neither the defendant nor I raised any objections. I did not ask the defendant any questions as regards the circumstances of the critical event because I was told that he had confessed, and he repeated his confession during further questioning when the written record was made.

As regards the defence lawyer's question, I may say that I did not speak with the defendant in private because there was no need for that since we all talked together, that is to say in the presence of the police officers.

As to the defence lawyer's further question, I did not inform the defendant of his rights, such as his right not to present a defence or answer any questions, because it was too late for that since he had already been questioned. The police officers gave him no information either.

I would add that the defendant looked very tired and after the questioning in my presence, which lasted for an hour, he fell asleep at the table where he was sitting during the questioning, after he had eaten a sandwich and drunk a juice. I do not remember whether he had glasses.

In reply to the question put by a member of the panel, I can say that the defendant raised no objections either as regards the record dictated by the police officer in his presence or as regards the police treatment when I asked him about it.

As regards the question put by the defendant, I do not know what time he was taken to the police station and what time his questioning started."

34. The applicant added that during the entire police questioning he had been half asleep and that the questioning had lasted the whole afternoon and evening before the arrival of lawyer P.B.

35. The trial court then issued a decision ordering that the record of the applicant's police questioning be removed from the case file on the ground that the applicant had been questioned by the police without the presence of a defence lawyer, although the written record of the questioning "had been drawn up in such a way as to suggest that the defence lawyer was present." This decision was quashed by the Supreme Court, on an appeal by the State Attorney, on 28 July 2005. The Supreme Court found that all relevant circumstances surrounding the applicant's police questioning had not been established.

36. On 1 September 2005 the applicant asked the Velika Gorica County Court for permission to consult the case file before the hearing scheduled

for 26 September 2005 because some fresh witnesses were supposed to give evidence. The applicant also stated that he had had no contact with his appointed defence lawyer. This request was not answered.

37. At the hearing held on 26 September 2005 a police officer, S.I., who had questioned the applicant, gave his evidence. The relevant part of the record reads:

“... his questioning as a suspect started on 4 June 2004. I conducted it and M.B. recorded it in writing. The questioning started some time after midnight because we were waiting for a defence lawyer. Therefore, it is wrongly stated in the written record of the questioning that it started at 12.25 p.m., because it started 25 minutes after midnight. Before the defence lawyer arrived I had talked to the accused and had made handwritten notes. The accused agreed to repeat what he had told me in the presence of his counsel. Therefore, I asked him to call a lawyer of his own choosing but the lawyer he chose was not available because he was away. He was then asked to choose a lawyer from our list of lawyers and he chose P.B., who came shortly after midnight and certainly before the questioning of the accused started. When the lawyer arrived he was able to talk in private with the accused and after that the questioning started. I emphatically confirm that the accused chose lawyer P.B. from the list of lawyers and that that lawyer was not called by the police. I remember that when the lawyer came into the room I told the accused that this was the lawyer he had chosen and I let them talk in private and after that the questioning started.

When I talked informally to the accused and made my handwritten notes the typist was not present. She came in at the same time as the lawyer and when the formal questioning started. When the formal questioning started I did not dictate to the typist from my handwritten notes, but the accused repeated his statement and answered the questions. The accused gave his own account and I also asked him questions and he gave answers. I think that the defence lawyer also asked a few questions. As far as I remember there were no objections on the part of the accused or the lawyer, either during or after the questioning. I do not recall talking to the lawyer when he arrived at the police station, but I do not exclude that possibility. It is also possible that one of my colleagues may have talked to him. During questioning the accused appeared completely composed and I had the feeling that after giving his statement he felt relieved.

In reply to the question by defence counsel I can say that after the defence lawyer arrived and before the accused started to present his defence, he had been informed of his right to remain silent and his right to a defence lawyer. The questioning was conducted in the presence of the typist M.B. and myself, but it is possible that some of my colleagues may have entered and exited the room. As far as I can recall the questioning lasted for about two hours, but I am not sure about that because a lot of time has elapsed since. I think that a copy of the written record was given to lawyer B., but I am not sure.

In answer to the question by the presiding judge I can say that during the questioning in the presence of the defence lawyer I did use my handwritten notes but I did not dictate on the basis of those notes without questioning the accused again. The accused again gave an account of the entire incident and I asked questions on the basis of my handwritten notes. I am sure that during the questioning the accused was composed and did not appear sleepy and did not fall asleep. It is possible that he was yawning because it was quite late.

In answer to the question by the accused I can say that neither I nor anyone else ill-treated him. At no time did the accused stay alone in the room; there were always some of the police officers present. After the questioning the written record was shown to the accused so that he could read it. I think that he only glanced at it and signed it. The defence lawyer also signed the record after the questioning. I do not remember whether there were any objections to the written record, although none was mentioned in the record.”

38. After that the typist M.B. gave her evidence. The relevant part of the record reads as follows:

“... on the material occasion I was asked to go to the General Crimes Division to type the written record of the questioning of the suspect Josip Mader. When I arrived I found the accused, my colleague S.I. and one lawyer ... Everything had been made ready for dictating and questioning. I remember that [police officer S.]I. informed the accused of his right to have defence counsel present during the questioning. It is possible that he also informed him of his other rights, but I do not remember that. I remember that during questioning the accused gave his statement and [police officer S.]I. dictated that statement to me. I saw that S.I. had his handwritten notes. I remember that [S.]I. asked the accused questions and the accused gave answers which [S.]I. dictated to me. I do not remember now how long the questioning lasted, possibly for about three hours. It is the usual practice that the written record is signed. I remember that I signed it, but I do not remember if anyone else also signed it. Because of the length of time which has elapsed I do not remember whether I or someone else signed the record.

In answer to the question by the defence lawyer I can say that I do not remember whether a copy of the written record was given to the defence lawyer. I do remember that the lawyer was given a power of attorney but I cannot say anything more precise about it.”

39. The same day the trial court refused a request by the defence for the record of the applicant’s questioning by the police to be excluded from the case file. The relevant part of the decision reads as follows:

“After hearing evidence from the witnesses P.B., S.I. and M.B. this panel has concluded that the written record of the questioning of the accused by the police on 4 June 2004 was drawn up after the accused had been questioned in the presence of his defence lawyer P.B., a lawyer practising in Zagreb, and after the accused had been informed [about his rights] under Article 225 §§ 2 and 3 of the Code of Criminal Procedure, and that as such [the statement given to the police] can be used as evidence in the criminal proceedings, as provided for by Article 177 § 5 of the Code of Criminal Procedure. Therefore, there is no statutory ground for the exclusion of that record from the case file.

This court assessed the evidence given by witness S.I. who, as a police officer, conducted the questioning of the suspect Josip Mader, as entirely reliable because his statement was convincing and realistic. He remembered the details of the questioning such as the fact that the suspect was asked to call a lawyer of his own choice, which the defendant attempted to do, only to find that the lawyer was not available. This is supported by the statement of the accused that he had the telephone numbers of several lawyers listed on his mobile phone, a statement which contributes to the credibility of the witness evidence.

The evidence of that witness shows that the accused repeated his statement in the presence of a lawyer, after he had been informed of his right to present his defence or to remain silent and of his right to a lawyer, after he had previously been questioned without a lawyer, when handwritten notes were made. [The accused] answered questions by S.I. and [S.]I. used his handwritten notes.

The evidence [given by witness S.I.] is corroborated by the evidence given by M.B. when she said that the accused had given his statement in the presence of a defence lawyer, which was then dictated to her by [S.]I., as well as answers to his questions. This court has no reason not to trust the evidence given by this witness because she, as an official who simply typed the written record, has no interest in the outcome of these criminal proceedings and no motive for giving evidence against the accused.

The above witness evidence clearly shows that neither the accused nor the defence lawyer raised any objections, either during or after the questioning, as regards the manner of the questioning of the accused or the written record. This is also confirmed by the evidence given by P.B.

The court has not put trust in the evidence given by witness P.B. because it is illogical, unrealistic and obviously aimed at attempting to exculpate the accused. It is not logical that P.B., as a lawyer and defence counsel of a defendant accused of a serious criminal offence, would not raise any objections as to the manner of questioning and recording before the police if such questioning had been conducted in contravention of the law, because his main duty as a defence lawyer was to ensure the lawfulness of the police procedure and the protection of the rights of the accused.

In his evidence at the trial, when he was no longer the accused's defence lawyer, he tried to call into question the lawfulness of the written record of the accused's confession because, as a professional, he is aware of the significance of that record for the decision on the accused's guilt.

The above undoubtedly shows that the accused was questioned by the police in the presence of a defence lawyer. His statutory rights were ensured and a written record was drawn up which the accused and the defence lawyer both signed without raising any objections. The said record can therefore be used as evidence in the criminal proceedings under Article 177 § 5 of the Code of Criminal Procedure."

40. On 11 October the defence lawyer, and on 13 October 2005 the applicant himself, lodged appeals against the decision of 26 September 2005. They argued that the applicant had been questioned by the police between 1 June 2004 at 6 a.m. and 4 June 2004 without the presence of his defence lawyer. They now argued that during that time he had not been allowed to sleep and had not been given any food or his medication. When finally the police officer dictated his alleged statement to the typist he had been asleep at the table. As to the presence of P.B., they argued that he had not been the applicant's chosen lawyer but had been called by the police from the list of lawyers who had agreed to answer urgent calls by the police, as P.B. himself had stated. Furthermore, they pointed out that P.B. had said that he had been called by the police after midnight, whereas the written record of the questioning noted that he had been called at 11 p.m. and had

arrived at ten minutes past midnight and that the questioning had started at twenty-five minutes past midnight. The questioning of the applicant by the police had ended at 2.30 a.m. Therefore, the lawyer had been present for about an hour, which would certainly not have been sufficient for the applicant to give his full statement and have it typed, since the written statement contained seven and a half pages.

They further pointed to the part of P.B.'s statement according to which it was the usual practice of the Zagreb police to call defence lawyers after the questioning of suspects had already been completed. They also stressed that no copy of the written record of the applicant's statement to the police had been given either to the applicant or to the defence lawyer.

41. On 3 November 2005 the Supreme Court dismissed the appeals. The relevant part of the decision reads as follows:

"... the evidence from the case file, and in particular the written record of the questioning of the accused on 4 June 2004, show that the first-instance court correctly found that the accused had been questioned by the police in the presence of a defence lawyer to whom he had previously issued a power of attorney, and that his statutory defence rights were respected. A written record was drawn up to this effect, which was signed by the accused and the defence lawyer without any objections. The fact that the questioning of the accused was in accordance with the law was confirmed by the witnesses S.I., the police officer who questioned the accused and M.B., who typed the written record of the questioning. The first-instance court rightly accepted these witnesses' statements as truthful because they were logical and detailed, whereas it rightly did not believe the statement given by witness P.B. because it contradicted his own actions as a defence lawyer who was present during the questioning and signed the written record of it without raising any objections, and whose statement is obviously intended to favour the accused.

The allegations in the appeal that the defendant was not allowed to choose his defence lawyer but that the latter was chosen by the police is unfounded in view of the evidence given by witness S.I. that he offered the accused the possibility of choosing a defence lawyer, which the latter attempted to do. The chosen lawyer had not been available, so he then chose P.B. as his defence lawyer from the list of lawyers and issued a power of attorney to him. This procedure is in accordance with Article 177 § 5 of the Code of Criminal Procedure, which provides that where the circumstances show that a chosen defence lawyer will be unable to arrive within three hours, the police should enable the suspect to choose another lawyer from the list of lawyers on duty for each county, compiled and submitted by the Croatian Bar Association to the police departments and county courts.

...

The allegation by the accused that the defence lawyer was not present during his questioning and that the questioning took place before the arrival of the defence lawyer and was recorded by the police and dictated for the written record in the lawyer's presence, is also unfounded. The notes made by the police are handwritten notes made by witness S.I. in his capacity as a police officer. He collected information from the suspect in accordance with Article 177 § 5 of the Code of Criminal Procedure, after which he waited until the arrival of the defence lawyer. The witness said that he used his handwritten notes during the questioning of the accused in the

presence of the defence lawyer, which is not against the law, and that the suspect repeated his defence and answered the questions.

...”

42. After the final hearing was held on 16 January 2006 the trial court, relying mainly on the applicant’s confession to the police, found him guilty of aggravated murder and sentenced him to twenty-eight years’ imprisonment. At the same time his detention was extended.

43. On the same day the applicant asked that a new defence lawyer be assigned to him. He alleged that his officially assigned counsel had visited him only once, on 2 May 2005, the 333rd day of his detention, and then only to ask for money.

44. On 18 January 2006 the applicant asked the Velika Gorica County Court for permission to consult the case file. On 22 January 2006 he asked that lawyer M.U. be allowed to consult the case file and visit him in prison so that he could lodge an appeal. On 13 February 2006 he informed the court that he had received the first-instance judgment and needed the assistance of a lawyer to file an appeal.

45. On 15 February 2006 the presiding judge informed the applicant that his requests of 18 and 22 January 2006 to consult the case file had been granted and fixed for 21 February 2006 with permission to consult the case file for two hours. The presiding judge refused the applicant’s request of 13 February 2006 for another defence counsel to be officially assigned to him, on the ground that the conditions for relieving the appointed counsel of his duties had not been met. The applicant was advised that he was free to appoint counsel of his own choosing.

46. On 19 February 2006 the applicant reiterated that he did not wish to be represented by lawyer M.K. On 20 February he again complained that lawyer M.K. had not visited him in prison and that he had had no contact with him.

47. On 21 February 2006 M.K. lodged an appeal against the first-instance judgment on the applicant’s behalf. He argued that the judgment was based on the applicant’s confession given to the police without a defence lawyer being present. He reiterated all the previously stated arguments in that respect.

48. On the same day the presiding judge allowed the lawyers M.U., L.J.P. and S.E. to visit the applicant in prison. On 23 February 2006 M.U. submitted a power of attorney to represent the applicant.

49. On 27 February 2006 the applicant lodged an appeal against the first-instance judgment. He analysed in detail the outcome of the proceedings and also reiterated his previous allegations regarding his questioning at the police station, repeating his arguments from appeals of 11 and 13 October 2005 (see § 42 above).

50. On 15 March 2006 M.U. also lodged an appeal reiterating the same arguments regarding the applicant's police questioning.

51. On 5 April 2006 the presiding judge relieved lawyer M.K. of his duties.

52. On 14 September 2006 the Supreme Court upheld the first-instance judgment. The relevant part of the appeal judgment reads as follows:

"The accused's defence rights were not violated because an infringement of Article 367 § 3 of the Code of Criminal Procedure can occur only during the trial and preparations for the trial, while what is complained of here are measures taken at the pre-trial stage of the criminal proceedings.

Irrespective of the above, the right of the accused to a defence lawyer has not been violated. The case file shows that immediately after the accused had been arrested, the police officers, at his request, called lawyer E.Z., who could not come because he was abroad, and then lawyer V.M., who also did not come. The police then asked the accused to choose a lawyer from the list of duty lawyers submitted by the Croatian Bar Association for each county. The accused agreed and issued a power of attorney to lawyer P.B. Thus the requirements of Article 177 § 5 of the Code of Criminal Procedure were satisfied and it cannot be said that the applicant's right to a lawyer of his own choice was denied. Whether that lawyer, who was present at the questioning and signed the written record without any objections, truly provided the accused with adequate legal assistance in accordance with the rules of the Bar Association and its code of ethics, is a question of the lawyer's professional beliefs and ethics and not a matter for discussion by this court as regards the issue of the lawfulness of the evidence consisting of the defence presented by the accused before the police in the presence of his chosen defence lawyer.

Further allegations in the appeal lodged by the lawyer M.U. concerning the supposed ill-treatment of the accused by the police and refusal to provide him with food and drink, which the accused interpreted as mental and physical pressure, have no basis either in the statements of the officials S.I. and M.B. or in the statement of the lawyer P.B., who said that the accused had eaten a sandwich and drunk a juice in front of him. Furthermore, the accused's mental and physical state at the time of the police questioning was assessed by a psychiatrist, D.K.K., who concluded that, on the basis of the written record and the manner in which the accused expressed himself, nothing indicated that he had any mental problems during the questioning ...

Hence, the allegations in the appeal that some kind of pressure or similar means were used during the accused's police questioning in order to make him confess to the criminal offence are unfounded."

53. On 3 July 2007 the applicant lodged a constitutional complaint, arguing that his right to a lawyer had been violated throughout the proceedings, and in particular during his questioning by the police, and that his alleged confession to the police had been obtained unlawfully. He also complained that from 1 to 4 June 2004 he had been kept at the police department, all the time sitting on a chair without sleep and food and that when he had arrived at Zagreb Prison he had had injuries on his body.

54. The applicant's constitutional complaint was dismissed by the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 11 March 2009.

The court found that the applicant had benefited from all the guarantees of a fair trial throughout the criminal proceedings against him and that there was no evidence to support the allegation that the lengthy questioning by the police had reduced the applicant to a state of physical and mental exhaustion capable of leading him to falsely incriminate himself. The relevant part of the decision reads as follows:

“The applicant complains of a lack of legal assistance during his questioning by the police between 2 and 4 June 2004 (the constitutional complaint wrongly gives the date as 1 June 2004 since the documents in the case file show that the applicant was arrested on 2 July 2006 at 7 a.m.). The second-instance judgment established that the choice of lawyer P.B. was not imposed on the applicant. Immediately after his arrest, and at the applicant’s request, the police officers attempted to inform lawyer E.Z., but the latter was absent, travelling abroad. After that the applicant engaged lawyer V.M., who did not arrive either. The police then asked the applicant to choose a lawyer from the list of lawyers on duty for each county, compiled and submitted by the Croatian Bar Association, and he signed a power of attorney in respect of lawyer P.B. Thus ... the applicant was not denied the right to a lawyer of his own choosing. Whether the lawyer thus chosen truly offered a satisfactory professional service to the applicant in accordance with the Croatian Bar Association Statute is a question of the lawyer’s professional ethics and not a matter to be assessed in the appeal proceedings, as correctly stressed by the Supreme Court.

...

As regards the applicant’s allegations that he was ill-treated (mentally and physically by being deprived of food and drinks and otherwise) by the police officers at the time the statement of his confession was drawn up ... the second-instance court found that these allegations had no basis in the statements of the police officers or the statement of lawyer P.B., who had been present at the time. The mental and physical condition of the applicant at the time he was questioned by the police was assessed by the psychiatric expert, who concluded that nothing in the written record [of the applicant’s questioning by the police] and the manner of his expression, as recorded, indicated that the applicant was suffering from a mental disorder or altered state of consciousness. Furthermore, that court established that the in-depth six-page statement by the applicant contained numerous details, names, dates and locations which could be known only to a person who was speaking from his own experience. This detailed statement is corroborated by other facts established during the proceedings. Furthermore, it was established that there was no medical report showing that the applicant suffered from any health problems at the time the criminal offence was committed (*tempore criminis*). The day the applicant committed the criminal offence he had chopped down an oak tree, which is a demanding physical job.

The applicant is quite a heavy person (at the time the criminal offence was committed he weighed about a hundred kilos) and thus obviously physically strong.

The psychiatric expert ... also gave her written and oral opinion about the physical and mental state of the applicant during his questioning by the police, and the Supreme Court found that there was no need for a further psychiatric examination and that the questioning of the applicant before the police had not been unlawful.

In view of all the above facts concerning the applicant's questioning by the police, the Constitutional Court finds that there is no evidence showing that the lengthy questioning by the police reduced the applicant to a state of physical and mental exhaustion capable of leading him to falsely incriminate himself. Although the applicant spent the period between 2 June 2004 at 7 a.m. and 4 June 2004 with the police while the written record was drawn up, the analysis of all the documents in the case file concerning the pre-investigation stage does not disclose any ill-treatment which could lead to [a finding of] a violation of his constitutional rights.

..."

3. Decisions adopted during the trial concerning the applicant's detention

55. On 3 June 2004 the investigating judge of the Zagreb County Court ordered the applicant to be held in police custody for a further twenty-four hours, until 7 a.m. on 4 June 2004, under Article 98 § 1 of the Code of Criminal Procedure. The decision expressly stated that the applicant had been arrested on 2 June 2004 at 7 a.m. This decision was served on the applicant. He did not appeal against it.

56. On 4 June 2004 the investigating judge, relying on Article 98 § 2 of the Code of Criminal Procedure, ordered the applicant's detention for a further forty-eight hours until 1 p.m. on 6 June 2004. The decision also expressly stated that the applicant had been arrested on 2 June 2004 at 7 a.m. It was served on the applicant and his chosen counsel, V.M. No appeal was lodged.

57. In a letter of 5 June 2004 the investigating judge ordered Zagreb County Prison to continue to detain the applicant until midnight on 7 June 2004.

58. On 7 June 2004 the investigation judge ordered his further detention under Article 102 § 1(4) of the Code of Criminal Procedure. This decision was served on the applicant and his counsel V.M. They did not lodge an appeal.

59. On 30 July 2004 a three-judge panel of the Velika Gorica County Court extended the applicant's detention, again under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was present. This decision was served on the applicant and the lawyer V.M. They did not lodge an appeal.

60. On 8 November 2004 a three-judge panel of the Velika Gorica County Court extended the applicant's detention, again under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was present. This decision was served on the applicant and the lawyer M.K. They did not lodge an appeal.

61. On 12 January 2005 a three-judge panel of the Velika Gorica County Court extended the applicant's detention under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was

present. This decision was served on the applicant. He did not lodge an appeal.

62. On 17 March 2005 a three-judge panel of the Velika Gorica County Court extended the applicant's detention under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel, although properly summoned, was present. This decision was served on the applicant. He did not lodge an appeal.

63. On 19 May 2005 a three-judge panel of the Velika Gorica County Court extended the applicant's detention under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was present. There is no indication in the case file that this decision was served on either of them.

64. On 20 July 2005 a three-judge panel of the Velika Gorica County Court extended the applicant's detention under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was present, although the latter was properly summoned. This decision was served on the applicant and he lodged an appeal, arguing that there was no evidence against him and that the three-judge panel had extended his detention always using the same wording, without examining whether the circumstances had changed.

65. On 4 August 2005 the Supreme Court dismissed the applicant's appeal.

66. On 27 September 2005 a three-judge panel of the Velika Gorica County Court extended the applicant's detention, again under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was present, although the latter was properly summoned. This decision was served on the applicant. No appeal was lodged.

67. On 8 December 2005 a three-judge panel of the Velika Gorica County Court extended the applicant's detention, again under Article 102 § 1(4) of the Code of Criminal Procedure. Neither the applicant nor his counsel was present, although the latter was properly summoned. This decision was served on the applicant. No appeal was lodged.

II. RELEVANT DOMESTIC LAW

68. The relevant part of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001 of 7 May 2001) reads as follows:

Article 140

“International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be incorporated into Croatian law and shall rank, in terms of their legal effects, above statutes. ...”

The relevant part of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002 of 3 May 2002 – “the Constitutional Court Act”) reads as follows:

Section 62

“1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she considers that an individual act by a State body, a body of local and regional self-government or a legal person with public authority which has determined his or her rights and obligations or a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: ‘constitutional right’) ...

2. If there is provision for another legal remedy in respect of a violation of the constitutional rights [complained of], a constitutional complaint may be lodged only after that remedy has been exhausted.

...”

69. The relevant provisions of the Code of Criminal Procedure (*Kazneni zakon Republike Hrvatske*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 62/2003, 178/2004 and 115/2006) read as follows:

Article 2

“...

(3) Where not otherwise provided by law, the State Attorney shall bring a criminal prosecution where there is a founded suspicion that an identified individual has committed a publicly prosecutable criminal offence and where there are no statutory obstacles to prosecution of that person.”

Article 97

“(1) Police shall bring the arrestee immediately, and within twenty-four hours at the latest, before an investigating judge or release him or her. Specific reasons shall be given for any delays.

...”

Article 102

“(1) Where a reasonable suspicion exists that a person has committed an offence, that person may be placed in detention:

...

4. if the charges involved relate to murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion or any other offence carrying a sentence of at least twelve years' imprisonment, when detention is justified by the *modus operandi* or other particularly serious circumstances of the offence;

..."

Article 110

"(1) A defendant, defence lawyer or the State Attorney may lodge an appeal against a decision ordering, extending or lifting a custodial measure, within two days thereof...

..."

Article 171

"(1) All State bodies and all legal entities are obliged to report publicly prosecutable criminal offences, whether they have been informed thereof or have learned about such offences on their own.

..."

Article 173

"(1) A criminal complaint shall be lodged with a competent State Attorney in writing or orally.

...

(3) Where a criminal complaint has been lodged with a court, a police force or a State Attorney not competent to deal with it, the authority in question shall receive the complaint and immediately forward it to the competent State Attorney."

70. Pursuant to Article 430 of the Code of Criminal Procedure, where the defendant requests an amendment of a final judgment following a finding of a violation of, *inter alia*, the right to a fair trial, by the European Court of Human Rights, the rules governing a retrial shall apply.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

71. The applicant complained that he had been beaten by the police both during his transport to the Zagreb Police Department and during the police questioning and that during that questioning from 6 a.m. on 1 June 2004

until about 1 a.m. on 4 June 2004 he had been deprived of sleep and food and forced to sit on a chair. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

1. The alleged beatings by the police during the applicant’s transport to the Zagreb Police Department

72. The applicant alleged that on 1 June 2004, as he was getting out of the police vehicle, he had been suddenly hit on the back of the neck by a police officer, causing him to fall to the ground and bruise the knuckles of his fingers, his left elbow and his forehead. He had received no medical assistance but had been able to wash the blood off in a toilet. The applicant alleged that he still had scars from these wounds.

73. The Court reiterates that where an individual is taken into police custody in good health but is found to be injured at the time of his release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Satik and Others v. Turkey*, no. 31866/96, § 54, 10 October 2000). The allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof beyond reasonable doubt. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Dedovskiy and Others v. Russia*, no. 7178/03, § 74, 15 May 2008).

74. Where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102; *Labita v. Italy* [GC], no. 26772/95,

§ 131, ECHR 2000-IV; and *Muradova v. Azerbaijan*, no. 22684/05, § 100, 2 April 2009).

75. The Court notes firstly that the medical report on the applicant submitted by the Government, drawn up on his arrival at Zagreb County Prison on 4 June 2004, makes no mention of any injuries found. Furthermore, although at the hearing before the investigating judge held on 4 and 7 June 2000 the applicant was represented by a lawyer of his own choice, he did not make any complaints about the alleged police beatings during his transport. Although before the national authorities he did raise complaints of the alleged ill-treatment during the police questioning, he never referred to the beating during his transport to the Zagreb Police department.

76. As to the allegation by the applicant that he had been hit by a police officer on 1 June 2004 in the presence of his wife as he was entering the police car, the Court notes that the applicant's wife made no mention of this incident, and the applicant did not suggest before the national authorities that his wife should give evidence about it. The fact that the applicant's wife decided not to testify in the criminal proceedings against him is of no relevance for this issue, since possible testimony concerning the alleged beatings by the police is unconnected to the assessment of the applicant's criminal responsibility for murder.

77. The Court finds that because of the lack of clear medical findings that the applicant had any injuries, coupled with the lack of any conclusive evidence that physical force was used against the applicant, his complaint as to the substantive aspect of Article 3 of the Convention is unsubstantiated. For the same reasons his assertion that he was beaten by the police during his transport lack credibility and therefore do not entail a procedural obligation under Article 3 of the Convention to investigate the applicant's allegations.

78. It follows that the complaints concerning the applicant's alleged beatings by the police during his transport to the Zagreb Police Department are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

2. The alleged ill-treatment during the police questioning

(a) The parties' submissions

79. The Government argued that the complaints under Article 3 of the Convention had been lodged outside the six-month time-limit, since the competent court had dismissed the allegations on 26 September 2005, whereas the applicant had lodged his application with the Court on 10 December 2007.

80. They argued further that the applicant had also failed to exhaust domestic remedies, since he had not complained about the alleged

ill-treatment to the investigating judge and had not lodged a criminal complaint with the relevant prosecuting authorities against the police officers allegedly implicated or any complaints about his treatment by the police officers with the Ministry of the Interior. He had also failed to seek damages from the State in that respect.

81. The applicant argued that he had exhausted all available remedies because he had complained about his ill-treatment during the criminal proceedings against him, including by lodging the constitutional complaint which had been dismissed by the Constitutional Court on 11 March 2009.

(b) The Court's assessment

(i) Compliance with the six-month rule

82. The Court reiterates that the object of the six-month time-limit under Article 35 § 1 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 continuously open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

83. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Nor can Article 35 § 1 be interpreted in a manner which would require an applicant to inform the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period as the date when the applicant first became or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

84. The Court reiterates that where there has been an action allegedly in contravention of Articles 2 or 3 of the Convention, the victim is expected to take steps to keep track of the investigation's progress or lack thereof, and to lodge his or her application with due expedition once he or she is or should have become aware of the lack of any effective criminal investigation (see, *mutatis mutandis*, *Varnava and Others v. Turkey* [GC],

nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, ECHR 2009-...).

85. As to the present case, the Court notes that the issue of the applicant's treatment while in the hands of the police at the police station was repeatedly raised by the applicant throughout his criminal trial and that the applicant also made allegations in that regard in his constitutional complaint. Therefore, the six-month time-limit started to run when the Constitutional Court dismissed the applicant's constitutional complaint, on 11 March 2009. The present application was lodged with the Court on 10 December 2007.

86. It follows that the Government's objection as to the applicant's failure to comply with the six-month time-limit must be rejected.

(ii) *Exhaustion of domestic remedies*

87. The Court reiterates that where an applicant has a choice of domestic remedies, it is sufficient for the purposes of the rule of exhaustion of domestic remedies that he or she make use of a remedy which is not unreasonable and which is capable of providing redress for the substance of his or her Convention complaints (see, *inter alia*, *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000, and *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, § 43, 5 July 2005). Indeed, where an applicant has a choice of remedies and their comparative effectiveness is not obvious, the Court interprets the requirement of exhaustion of domestic remedies in the applicant's favour (see *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 110, ECHR 2008-... (extracts), and the cases cited therein). Once the applicant has used such a remedy, he or she cannot also be required to have tried others that were available but probably no more likely to be successful (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 56, 12 April 2007, and the cases cited therein).

88. The Court notes that in his submission of 9 December 2004 to the trial court, the applicant complained about the manner of his police questioning and explicitly alleged that he had been beaten by the police, deprived of sleep and forced to sit on a chair continuously from 6 a.m. on 1 June 2004 until about 1 a.m. on 4 June 2004, as well as deprived of food for twenty hours. He repeated these allegations in his appeal against the first-instance judgment and in his constitutional complaint.

89. The Court considers that by informing the judicial authorities of his treatment during the police questioning the applicant complied with his duty to inform the relevant national authorities of ill-treatment against him. In this connection, the Court is also mindful of the relevant provisions of the Code of Criminal Procedure, which require a court receiving a criminal complaint involving allegations of a publicly prosecutable criminal offence to forward it immediately to the competent State Attorney. In the Court's

view, there is no doubt that the allegations of ill-treatment by the police amounted to such a criminal offence.

90. As regards the civil remedies suggested by the Government, the Court considers that effective deterrence against ill-treatment by State officials, where fundamental values are at stake, requires efficient criminal-law provisions. The civil remedies relied on by the Government cannot be regarded as sufficient for the fulfilment of a Contracting State's obligations under Article 3 of the Convention in cases such as the present one, as they are aimed at awarding damages rather than identifying and punishing those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports of Judgments and Decisions* 1998-VIII).

91. Against this background, the Court finds that the applicant made adequate use of the remedies provided for in domestic law. Accordingly, the applicant's complaints concerning the manner of his questioning by the police cannot be dismissed for failure to exhaust domestic remedies.

(iii) Conclusion

92. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

93. The applicant submitted that on his arrival at the Zagreb Police Department shortly after 6 a.m. on 1 June 2004 he had been taken to an interview room and kept there until 4 June 2004. Throughout that time he had been forced to sit on a chair without sleep, food or treatment for his medical conditions such as diabetes, cardiac problems and high blood pressure. During questioning the police officers had continually slapped him in the face, hit him on the head with a heavy notebook and once, when he had fallen to the floor, kicked him all over his body, causing him injuries including a permanent injury to the coccyx.

94. The applicant argued that the manner of his questioning by the police amounted to ill-treatment contrary to Article 3 of the Convention.

95. The Government argued that the applicant had not been beaten by the police officer and that no injuries had been recorded on his arrival at Zagreb County Prison. As to the applicant's allegations that he had been forced to sit on a chair during his whole stay at the Zagreb Police Department and had not been given any food or water, the Government submitted that the applicant had been given food and drinks throughout his

stay at the Police Department. They maintained further that, after the polygraph test of the applicant had been carried out on 1 June 2004 between 11 a.m. and 6.15 p.m., he had been interviewed by two police officers, S.I. and R.H., and then allowed to rest on “an auxiliary bolster” [a spare cushion] at the Zagreb Police Department.

96. After he had been arrested at 7 a.m. on 2 June 2004 his questioning by the police had continued into the night of 2 June, after which he had been given “an opportunity to rest on an auxiliary bolster” at the Zagreb Police Department.

97. On 3 June 2004 the applicant had been formally interviewed by the police in the presence of lawyer P.B. When the interview finished at about 2.30 a.m. on 4 June 2004 he had been taken to the detention unit of the Zagreb Police Department and placed in a cell furnished with a bed, where he had spent the rest of the night. Detainees in that unit were regularly given food and drinks.

98. The Government submitted that no record existed of any of the above.

99. As to the procedural aspect of Article 3, they maintained that the trial court had heard evidence from all relevant witnesses regarding the manner of the applicant’s police questioning and had found it to have been conducted in accordance with the law.

2. The Court’s assessment

(a) Substantive aspect of Article 3 of the Convention

100. The Court notes that in the part of their observations concerning the alleged substantive violation of Article 3 of the Convention the Government stated that the police officer had not hit the applicant and that no injuries had been recorded when the applicant had arrived at Zagreb Prison. They also stated that the applicant had been allowed to sleep on “an auxiliary bolster” and had been given food. However, no documents support these statements.

101. In assessing the applicant’s version of events – that he was deprived of sleep and food and forced to sit on a chair continuously for two days and nineteen hours – the Court finds that a number of facts add credibility to his submissions. It notes that the applicant’s questioning, which led to his criminal prosecution for murder, took place in the absence of basic procedural guarantees (see below, §§ 150-158). In particular, the applicant was questioned without the presence of a lawyer. Furthermore, his initial detention by the police was not registered because it is undisputed that the applicant arrived at the Zagreb Police Department at about 6 a.m. on 1 June 2004 but his formal detention commenced twenty-three hours later, at 7 a.m. on 2 June 2004.

102. Furthermore, in his testimony before the trial court police officer S.I., who had questioned the applicant, in no way denied the applicant's allegations, although he had been aware of them and of their relevance to the question whether the applicant's confession had been made in accordance with the requisite procedural guarantees, the very issue the police officer had been called to testify about. Furthermore, lawyer P.B. testified that when he had arrived at the Police Department at 1 a.m. on 4 June 2004 the applicant had looked very tired and had actually fallen asleep at the table where he was sitting.

103. The Court also takes note of the fact that the police kept no record of the time when the applicant was being interviewed by the police officers, save for the polygraph test carried out between 11 a.m. and 6.15 p.m. on 1 June 2004 and his final interviews in the early morning of 4 June 2004. Likewise, the police kept no record of when the applicant was allowed to sleep and when he was given food or drinks. Furthermore, the Government submitted that only after his final interview in the early morning of 4 June 2004 had the applicant been placed in a proper cell furnished with a proper bed.

104. Against that background, and particularly in view of the absence of any official record the Court accepts the applicant's allegations as being true.

105. The Court reiterates that Article 3 of the Convention ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. It also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human rights requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII (extracts)). Where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny (see *Ülkü Ekinci v. Turkey*, no. 27602/95, § 135, 16 July 2002) and will do so on the basis of all the material submitted by the parties.

106. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C, and *A. v. the United Kingdom*, 23 September 1998, § 20, *Reports* 1998-VI).

107. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering

(see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been considered “degrading” when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission, § 67, Series A no. 280, and *Wieser v. Austria*, no. 2293/03, § 36, 22 February 2007).

108. As to the present case, the Court notes that the applicant arrived shortly after 6 a.m. on 1 June 2004 at Zagreb Police Department, where he was deprived of sleep and forced to sit on a chair continuously for two days and nineteen hours. When at about 1 a.m. on 4 June 2004 lawyer P.B. arrived, the applicant was given a sandwich and a fruit juice. The Court is persuaded that such treatment caused the applicant physical and mental suffering to a degree incompatible with the prohibition of ill-treatment under Article 3 of the Convention.

109. On the other hand, the Court does not find sufficient evidence to establish the veracity of the applicant’s allegations that he was also beaten by the police during his questioning.

110. The Court considers that the treatment described by the applicant constituted inhuman treatment and that there has therefore been a violation of the substantive aspect of Article 3 of the Convention.

(b) Procedural aspect of Article 3 of the Convention

(i) General principles

111. The Court reiterates its settled case-law to the effect that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. An obligation to investigate “is not an obligation of result but of means”: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

112. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness

testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII; *Mikheyev v. Russia*, no. 77617/01, §§ 107-108, 26 January 2006; and *Petropoulou-Tsakiris v. Greece*, no. 44803/04, § 50, 6 December 2007).

(ii) *Application of the above principles to the present case*

113. Turning to the circumstances of the present case, the Court notes that it is undisputed between the parties that the applicant arrived at Zagreb Police Department in Heinzlova Street in Zagreb at about 6 a.m. on 1 June 2004 and stayed there until he was transferred to Zagreb County Prison on 4 June 2004.

114. The applicant repeatedly complained during his trial and in his constitutional complaint about the ill-treatment at issue. By informing the judicial authorities assigned to his case the applicant complied with his duty to inform the relevant national authorities of his alleged ill-treatment.

115. The applicant's allegations of ill-treatment by the police were serious, and in view of the fact that it was clear that he had been in the hands of the police from 6 a.m. on 1 June 2004 until an unspecified time on 4 June 2004, they called for an official and thorough examination by the relevant authorities.

116. The Court notes firstly that no official investigation has ever been opened into the applicant's allegations of ill-treatment. It notes further that the trial court heard evidence concerning the circumstances of the applicant's questioning by the police from police officer S.I. and typist M.B., and from lawyer P.B. They all concentrated their statements on the time when lawyer P.B. had arrived at the police department, that is to say at about 1 a.m. on 4 June 2004. The trial court established that the applicant had eaten a sandwich and drunk a fruit juice in the presence of the lawyer and had then fallen asleep at the table. However, no assessment was made as to the circumstances of the applicant's stay at the police station from 1 June 2004 until the time when lawyer P.B. arrived.

117. The trial court also ordered a psychiatric examination of the applicant in order to establish, *inter alia*, his mental state during police questioning. However, this report made no contribution to verifying the applicant's allegations of ill-treatment.

118. It follows that there was no effective official investigation into the applicant's allegations of ill-treatment by the police. Accordingly, there has also been a violation of the procedural aspect of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

119. The applicant complained that his detention had not been lawful and had not followed the procedure prescribed by law and that he had not been promptly informed of the reasons for his arrest and of the charges against him. He also complained about the duration of and the reasons relied on for his pre-trial detention, and that he had not been brought promptly before a judge authorised to order his release. He relied on Article 5 §§ 1, 2 and 3 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

...”

Admissibility

1. The parties' submissions

120. The Government argued that the applicant had not exhausted all relevant domestic remedies because he had failed to lodge appeals against the decisions concerning his detention.

121. The applicant opposed that view.

2. *The Court's assessment*

(a) **General principles**

122. The Court reiterates that in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would mean duplicating the domestic process with proceedings before the Court, which would hardly be compatible with the subsidiary nature of the Convention (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008). Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his or her Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005).

(b) **Application of these principles to the present case**

(i) *The applicant's detention by the police*

123. The Court notes that the applicant arrived at the police station at around 6 a.m. on 1 June 2004. According to the applicant his detention should be counted from that time. The Government contended that he had been formally arrested on 2 June 2004 at 7 a.m. and that his initial detention under the direct police order had lasted for twenty-four hours, until 3 June 2004 at 7 a.m.

124. Leaving the issue of the actual time of the applicant's arrest aside, the Court notes that the applicant signed the arrest report, in which it was expressly stated that he had been arrested on 2 June 2004 at 7 a.m. and that he had raised no objections to the order. After that, the extension of his police custody was ordered by a decision of the investigating judge of the Zagreb County Court on 3 June 2004. In that decision the judge expressly stated that the applicant had been arrested on 2 June 2004 at 7 a.m. The decision was served on the applicant.

125. The Court notes that the applicant complained that in reality he had been detained from the moment he had arrived at the police station, that is

to say from 1 June 2004 at 6 a.m. He further complained that he had not been brought before a judge promptly.

126. In this connection the Court notes that, although the applicant had the right to lodge an appeal against the decision of the investigating judge, in the context of which he could have put forward the above-mentioned complaints, he omitted to do so. Had his appeal been unsuccessful he could also have lodged a constitutional complaint.

127. Furthermore, a decision of the Zagreb County Court investigating judge of 4 June 2004, issued after a hearing in the applicant's presence, again expressly mentioned that the applicant had been arrested on 2 June 2004 at 7 am. The applicant did not lodge an appeal against that decision.

128. The Court considers that the applicant, by omitting to lodge an appeal against the decisions of the Zagreb County Court investigating judge of 3 and 4 June 2004, failed to exhaust domestic remedies. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(ii) The applicant's further detention

129. As regards the grounds for and duration of the applicant's detention, the Court notes that his detention was ordered and then extended by numerous decisions of the national judicial authorities. Each of these decisions was served on the applicant and each was accompanied by instructions on how to lodge an appeal. However, with the exception of the decision of 20 July 2005, the applicant did not lodge an appeal against any of the decisions concerning his detention.

130. As regards the decision of 20 July 2005, when his appeal was dismissed by the Supreme Court on 4 August 2005 the applicant did not lodge a constitutional complaint against that decision.

131. In this connection the Court notes that the Croatian Constitution guarantees the right to liberty of person and that the Convention is directly applicable in Croatia. The Croatian system allows for a separate constitutional complaint against each appeal decision on detention (see *Peša v. Croatia*, no. 40523/08, § 54, 8 April 2010, and *Getoš-Magdić v. Croatia*, (dec.), no. 56305/08, 24 June 2010).

132. By failing to use these remedies the applicant did not give the national authorities an opportunity to prevent or put right the violations alleged against him before he submitted these allegations to the Court. It follows that this part of the application must also be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

133. The applicant complained that his trial had been unfair because he had not been afforded adequate time and facilities to prepare his defence; that he had been questioned by the police without the presence of a defence lawyer; that the services of his officially assigned legal counsel had fallen short of the requirements of a fair trial and that his requests for witnesses to be called had been denied without good reason. He relied on Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, the relevant parts of which provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

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

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

A. Admissibility

1. Complaints concerning the time and facilities for preparation of the applicant's defence and calling of witnesses

134. The Government argued that the applicant had failed to exhaust domestic remedies because he had not included these complaints in his appeal or in his constitutional complaint.

135. The applicant replied that he had exhausted all available remedies.

136. As regards the exhaustion of domestic remedies the Court refers to the general principles stated in paragraph 113 above. It notes, in respect of applications lodged against Croatia that, according to the Court's case-law, applicants are in principle required to exhaust remedies before the domestic courts and ultimately to lodge a constitutional complaint. The applicant's right to be allowed adequate time and facilities for preparation of his defence, his right to be legally represented and his right to examine witnesses in criminal proceedings against him, which featured in his complaints under Article 6 before the Court, are all guaranteed by Article 29

of the Croatian Constitution. Furthermore, the Convention is directly applicable in Croatia.

137. The Court notes that on 3 July 2007 the applicant did lodge a constitutional complaint within the prescribed time-limit. In that complaint, however, he did not rely, even in substance, on the same grounds which he submitted before the Court.

138. Before the Court he complained, *inter alia*, that the requirements of a fair trial had not been satisfied in the criminal proceedings against him because he had had no opportunity to examine the witnesses called on behalf of the prosecution and had not been afforded time and facilities for the preparation of his defence. In his constitutional complaint he alleged that his right to a lawyer had been violated throughout the proceedings, and in particular during his questioning by the police, and that his alleged confession before the police had been unlawfully obtained. He also complained that from 1 to 4 June 2004 he had been kept at the police department, all the time sitting on a chair, without sleep and food, and that when he had arrived at Zagreb Prison, he had had injuries on his body.

139. Hence, contrary to the principle of subsidiarity, the applicant did not provide the Constitutional Court with an opportunity to afford him a remedy in respect of his complaints concerning the allegedly insufficient time and facilities afforded to him for preparation of his defence and the trial court's refusal to hear witnesses he had called.

140. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Complaints concerning the applicant's right to defence counsel during his police questioning and during the trial

141. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

142. The applicant argued that he had been questioned by the police without the assistance of a lawyer. The applicant further alleged that he had not been allowed to call a lawyer of his own choosing to assist him during the interview. The police officers made a record of the questioning, the content of which was untrue, according to the applicant, and was not read aloud to him. They stated that he had confessed to the murder of V.M. The

applicant was forced to sign the written record of his alleged questioning. He was not able to read it owing to the fact that he had no glasses on him although he suffered from severe long-sightedness and could not read without glasses, a fact which was not known to the police. On 4 June 2004 at about 1 a.m. a lawyer, P.B., called by the police, arrived. He signed the record of the applicant's questioning, which had already been prepared, without talking to the applicant and without reading it, and then left.

143. The applicant maintained that the lawyer P.B., when questioned at his trial, had confirmed the applicant's allegations that he, P.B., had not been present during the applicant's questioning, that he had not heard the police officers informing the applicant of his defence rights and that he himself had not been given a copy of the written record of the applicant's questioning. P.B. had also said that this was standard police procedure and that he encountered about two hundred such cases each year.

144. The applicant further maintained that the officially appointed defence lawyer, M.K., had not provided him with adequate legal assistance during the trial since he had visited him in prison only once, on his 333rd day in detention, and then only to ask for money; they had had no other contact. He had complained to the presiding judge about the lack of contact with the officially appointed lawyer but no steps had been taken to remedy that situation.

145. The Government argued that the applicant had been informed of his right to legal assistance at the time of his arrest. According to the Government, the applicant was not arrested on 1 June 2004, but was merely asked to come for interview to the Zagreb Police Department. He was told that he could leave whenever he wanted.

146. At the time of his arrest the applicant was informed of the reasons for his arrest, his rights and in particular his right to a lawyer. His wife and a lawyer, E.Z., were informed. However, E.Z. said that he could not come. When on 3 June 2004 the applicant was informed that the body had been found, he again asked that E.Z. be called. However, it turned out that E.Z. had left for Budapest and the applicant was asked to choose another lawyer.

147. Since the lawyer the applicant had attempted to contact had not been available he had chosen P.B. from the list of lawyers kept by the police. This lawyer had assisted the applicant during the police questioning.

148. During the trial before the court of first instance the applicant had been represented by an officially appointed lawyer. The lawyer had attended all the hearings, put relevant questions to witnesses, adduced evidence and lodged appeals.

2. The Court's assessment

(a) Complaint about the lack of legal assistance during the applicant's police questioning

(i) General principles

149. The relevant principles have been set forth in the Grand Chamber judgment in *Salduz v. Turkey* ([GC], no. 36391/02, 27 November 2008), as follows:

“50. The Court reiterates that, even if the primary purpose of Article 6, as far as criminal proceedings are concerned, is to ensure a fair trial by a ‘tribunal’ competent to determine ‘any criminal charge’, it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 - especially paragraph 3 – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (*Imbrioscia*, cited above, § 36). As the Court has already held in its previous judgments, the right set out in paragraph 3 (c) of Article 6 of the Convention is one element, amongst others, of the concept of a fair trial in criminal proceedings contained in paragraph 1 (*Imbrioscia*, cited above, § 37, and *Brennan*, cited above, § 45).

51. The Court further reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of fair trial (*Poirimol v. France*, 23 November 1993, § 34, Series A no. 277-A, and *Demebukov v. Bulgaria*, no. 68020/01, § 50, 28 February 2008). Nevertheless, Article 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial. In this respect, it must be remembered that the Convention is designed to ‘guarantee not rights that are theoretical or illusory but rights that are practical and effective’ and that assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (*Imbrioscia*, cited above, § 38).

52. National laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings. In such circumstances, Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation. However, this right has so far been considered capable of being subject to restrictions for good cause. The question, in each case, has therefore been whether the restriction was justified and, if so, whether, in the light of the entirety of the proceedings, it has not deprived the accused of a fair hearing, for even a justified restriction is capable of doing so in certain circumstances (see *John Murray*, cited above, § 63; *Brennan*, cited above, § 45, and *Magee*, cited above, § 44).

53. These principles, outlined in paragraph 52 above, are also in line with the generally recognised international human rights standards (see paragraphs 37-42 above) which are at the core of the concept of a fair trial and whose rationale relates in particular to the protection of the accused against abusive coercion on the part of the

authorities. They also contribute to the prevention of miscarriages of justice and the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused.

54. In this respect, the Court underlines the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (*Can v. Austria*, no. 9300/81, Commission's report of 12 July 1984, § 50, Series A no. 96). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task it is, among other things, to help to ensure respect of the right of an accused not to incriminate himself. This right indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-..., and *Kolu v. Turkey*, no. 35811/97, § 51, 2 August 2005). Early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination (see, *mutatis mutandis*, *Jalloh*, cited above, § 101). In this connection, the Court also notes the recommendations of the CPT (paragraphs 39-40 above), in which the committee repeatedly stated that the right of a detainee to have access to legal advice is a fundamental safeguard against ill-treatment. Any exception to the enjoyment of this right should be clearly circumscribed and its application strictly limited in time. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies.

55. Against this background, the Court finds that in order for the right to a fair trial to remain sufficiently 'practical and effective' (see paragraph 51 above) Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 (see, *mutatis mutandis*, *Magee*, cited above, § 44). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."

(ii) *Application of the above principles in the present case*

150. Turning to the present case, the Court notes that the applicant arrived at Zagreb Police Department on 1 June 2004 at about 6 a.m. in order to be interviewed by the police in connection with the murder of V.M. However, the national authorities considered that he had not been arrested until 2 June 2004 at 7 a.m.

151. The applicant was provided with the assistance of a lawyer from about 1 a.m. on 4 June 2004. Whether the Court accepts the applicant's assertion that he had been arrested on 1 June, or the Government's assertion that the arrest took place on 2 June, the fact remains that during the initial questioning by the police the applicant did not have the assistance of a lawyer.

152. The evidence given at the criminal trial by the applicant, the lawyer P.B. and even the police officer S.I., who questioned the applicant, clearly shows that the police questioned the applicant before P.B. arrived at the police department.

153. In view of the principle that an accused has to be provided with the assistance of a lawyer from the time of his arrest, the Court does not have to examine the parties' arguments as to the quality of the legal assistance afforded to the applicant by P.B. Irrespective of the quality of this assistance, the fact remains that the applicant was questioned by the police and made his confession without consulting with a lawyer or having one present.

154. The confession made by the applicant to the police was used as valid evidence in the criminal trial against the applicant and his conviction was to a significant degree based on it. Thus, in the present case, the applicant was undoubtedly affected by the restrictions on his access to a lawyer, since his statement to the police was used in convicting him. Neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which occurred during the applicant's police custody. However, it is not for the Court to speculate on the impact which the applicant's access to a lawyer during police custody would have had on the ensuing proceedings (see *Salduz*, cited above, § 59).

155. The question now remains whether the applicant waived his right to legal counsel. In this connection the Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000). However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-...; *Kolu*, cited above, § 53; and *Colozza v. Italy*, 12 February 1985, § 28, Series A no. 89).

156. The applicant in the present case complained from the initial stages of the proceedings about the lack of legal assistance during his initial police questioning and also about the quality of the legal assistance provided to him by lawyer P.B.

157. The police officer S.I., in his evidence before the trial court, also said that the applicant had asked that the lawyer E.Z. be called; the Government reaffirmed this in their version of the facts. The Court therefore concludes that the applicant did not waive his right to legal assistance during his police questioning.

158. Against this background, the Court finds that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case.

(b) Complaint about the lack of adequate legal assistance during the trial

(i) General principles

159. Further to the principles enunciated in paragraph 136 the Court considers that the following elements are also of relevance to the issue of the applicant's representation by officially appointed counsel during his criminal trial before the Velika Gorica County Court.

160. The Court observes that the responsibility of the Contracting Parties is incurred by the actions of their organs. A lawyer, even if officially appointed, cannot be considered to be an organ of the State. Given the independence of the legal profession from the State, the conduct of the case is essentially a matter between the defendant and his or her counsel, whether appointed under a legal-aid scheme or privately financed, and, as such, cannot, other than in special circumstances, incur the State's liability under the Convention (see *Artico v. Italy*, 13 May 1980, § 36, Series A no. 37; *Daud v. Portugal*, 21 April 1998, § 38, Reports 1998-II; *Tuziński v. Poland* (dec), no. 40140/98, 30 March 1999; *Rutkowski v. Poland* (dec.), no. 45995/99, ECHR 2000-XI; and *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002).

161. Nevertheless, assigning counsel to represent a party to the proceedings does not in itself ensure the effectiveness of the assistance (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275). There may be occasions when the State should act and not remain passive when problems of legal representation are brought to the attention of the competent authorities. It will depend on the circumstances of the case whether, taking the proceedings as a whole, the legal representation may be regarded as practical and effective (see, *mutatis mutandis*, *Artico*, cited above, § 33; *Goddi v. Italy*, 9 April 1984, § 27, Series A no. 76; *Rutkowski*, cited above; *Staroszczyk v. Poland*, no. 59519/00, §§ 121-122; *Siałkowska v. Poland*, no. 8932/05, §§ 99-100, 22 March 2007; and *Ebanks v. the United Kingdom*, no. 36822/06, §§ 71-73, 26 January 2010).

(ii) Application of these principles to the present case

162. Turning to the circumstances of the present case the Court notes that the applicant alleged that his officially appointed counsel had visited

him only once, on 2 May 2005, the 333rd day of his detention, and then only to ask for money. The applicant complained several times about the quality of the services of his appointed counsel and asked for him to be replaced; this request was refused.

163. However, the Court has to ascertain whether, owing to the lack of contact with the officially appointed defence lawyer, the applicant suffered any actual prejudice in the criminal proceedings against him.

164. In this connection the Court notes that the lawyer, who represented the applicant during the trial stage of the proceedings, attended all the hearings before the trial court and actively participated by making relevant proposals and putting questions to the witnesses.

165. The defence lawyer also asked that the police report containing the applicant's confession be excluded from the case file and lodged an appeal against the decision refusing that request. He further lodged an appeal against the first-instance judgement (see, conversely, *Ananyev v. Russia*, no. 20292/04, § 55, 30 July 2009, where the Court found that there had been a violation of the applicant's right to a fair trial on the ground that the officially appointed lawyer, in addition to not having any contact with the applicant, had also not prepared any grounds of appeal of her own).

166. The Court further notes that the record containing the applicant's alleged confession was part of the case file and that counsel had the opportunity, even without consulting the applicant in person, to study the case file and prepare his line of defence on that basis.

167. The Court also notes that at the appeal stage of the proceedings the applicant was represented by a lawyer of his own choice and that he therefore had an opportunity to advance all the relevant arguments he might have wished to. However, neither in his appeal to the Supreme Court nor in his constitutional complaint did the applicant advance any new arguments which had not been previously submitted by his officially appointed defence counsel.

168. Against this background, and viewing the proceedings as a whole, the Court considers that the lack of contact between the applicant and his officially appointed defence counsel did not prejudice the applicant's defence rights to a degree incompatible with the requirements of a fair trial.

169. Therefore, there has been no violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case in respect of the applicant's representation by officially appointed defence counsel during the trial before the Velika Gorica County Court.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

170. Lastly, the applicant invoked Articles 13 and 14 of the Convention.

171. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that

this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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

173. The applicant claimed 50 euros (EUR) in respect of non-pecuniary damage for each day of his allegedly unlawful detention.

174. The Government considered the applicant’s claim to be unfounded and in any event excessive.

175. The Court notes that the applicant’s complaints under Article 5 of the Convention have been declared inadmissible and that he has not submitted any claim for pecuniary or non-pecuniary damage in connection with his other complaints. It therefore dismisses this claim.

176. The Court also notes that the applicant has the possibility to seek a fresh trial under Article 430 of the Croatian Code of Criminal Procedure.

B. Costs and expenses

177. The applicant did not claim any costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the ill-treatment during the police questioning and the complaint concerning the lack of adequate legal assistance during his police questioning and at the trial before the Velika Gorica County Court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention in that the applicant was subjected to

inhuman treatment during his stay at the Zagreb Police Department from 1 to 4 June 2004;

3. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention in that no investigation into the applicant's allegations of ill-treatment was made;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention on account of the lack of legal assistance afforded to the applicant during police questioning;
5. *Holds* that there has been no violation of Article 6 §§ 1 and 3 of the Convention on account of the lack of legal assistance afforded to the applicant during his criminal trial before the Velika Gorica County Court;
6. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President