



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

FIRST SECTION

CASE OF HORVATIĆ v. CROATIA

(Application no. 36044/09)

JUDGMENT

STRASBOURG

17 October 2013

FINAL

17/01/2014

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

In the case of Horvatić v. Croatia,

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

Isabelle Berro-Lefèvre, *President*,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 36044/09) 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 Mijo Horvatić (“the applicant”), on 9 June 2009.

2. The applicant was represented by Mr J. Doneski, a lawyer practising in Garešnica. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that the manner in which the evidence had been taken in criminal proceedings against him ran counter to the principles of a fair trial as safeguarded by Article 6 of the Convention.

4. On 3 October 2011 the complaint concerning the alleged unfairness of the criminal proceedings against the applicant was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1941 and lives in Garešnica, Croatia.

6. On 8 February 1996, at around 6.55 p.m., a bank robbery was committed in Garešnica. The bank robber was disguised, wearing an improvised mask made of a winter cap and a winter scarf, a skirt over his

trousers, an overcoat, and rubber gloves on his hands. Using a handgun the bank robber forced the bank employees to put money in a crate, after which he fled the scene.

7. Police Station no. 4 of the Bjelovarsko-bilogorska Police Department in Garešnica (*Policajska uprava Bjelovarsko-bilogorska, IV Policajska postaja Garešnica* – “the police”) was immediately informed of the incident. Police officers were sent to secure the scene and at 8.10 p.m. an *in situ* inspection was carried out. No evidence was found inside the bank, but there were a number of footprints in the snow outside the bank.

8. On the same day a number of persons, including the applicant, were brought in for questioning by the police. The applicant was released from the police station after denying any involvement in the crime.

9. In the meantime, in the basement of a residential building in Garešnica the police found clothes which they suspected had been worn and then discarded by the bank robber.

10. On 9 February 1996, at 12.50 p.m., the police carried out an on-site inspection of the basement, where they found and seized a stack of money, an improvised mask made from a blue winter cap, a green winter scarf, a crate with 500 Croatian kunas inside it, a pair of green rubber gloves, a blue overcoat and a purple skirt. A police dog was used in the inspection of the scene.

11. On the same day the applicant was again taken to the police station for questioning. In the course of the applicant’s stay at the police station the police dog was shown the applicant and, according to the police report, the dog’s behaviour associated the applicant with the objects found in the basement.

12. At 4.00 p.m. the applicant was arrested on suspicion of having committed the bank robbery.

13. The applicant was asked to take off his trousers and t-shirt. He complied with the request and signed a seizure record. The seizure record only indicates that the trousers and t-shirt were taken from the applicant. The police also took samples from the applicant’s hair, body hair and nails. There is no specific record in this regard.

14. According to the applicant, he was then removed from the room while the police officers packed up the clothes and the samples taken from him. According to the Government, the clothes and the samples were packed by a forensic technician in the presence of a police officer and the applicant, and the police officer simultaneously drafted the seizure record in respect of the applicant’s clothes, which the applicant then signed.

15. In course of the further investigation the police interviewed a number of persons and searched the applicant’s flat. No objects connected with the bank robbery were found.

16. On 10 February 1996 employees of the bank identified items found and seized in the basement of the residential building (see paragraphs 9 and 10) as the clothes worn by the bank robber.

17. On the same day the police sent the items from the basement, together with the applicant's clothes and samples of his hair and nails, to the Ministry of the Interior's Centre for Forensic Analysis in Zagreb (*Ministarstvo unutarnjih poslova, Centar za kriminalistička vještačenja* – "the Forensic Centre") and commissioned a forensic report. In their request the police indicated that the samples had been taken and packed using gloves and that a new pair of gloves had been used each time a different item had been packed.

18. A preliminary forensic report was drawn up by the Forensic Centre on the same day. The Forensic Centre found strands of the applicant's hair on the blue overcoat and winter cap worn by the bank robber. It also found fibres from the skirt worn by the bank robber on the applicant's t-shirt and fibres from the winter scarf on his trousers.

19. On 11 February 1996 the applicant was brought before the investigating judge of the Bjelovar County Court (*Županijski sud u Bjelovaru*) for questioning, but he decided to remain silent because his defence lawyer was not present. On the same day the investigating judge ordered the applicant's pre-trial detention.

20. The investigating judge questioned the applicant again on 12 February 1996 in the presence of his defence lawyer, but the applicant remained silent.

21. On 14 February 1996 the police forwarded to the investigating judge two forensic reports drawn up on 11 and 13 February 1996 by the Forensic Centre.

22. According to the Forensic Centre's report of 11 February 1996 strands of the applicant's hair had been found on the winter cap, the scarf and the overcoat worn by the bank robber; the report of 13 February 1996 indicated that fibres from the applicant's t-shirt and trousers had been found on the crate, the skirt and the overcoat used by the bank robber. The latter report also indicated that fibres from the overcoat, the skirt and the scarf had been found on the applicant's trousers and t-shirt.

23. On 14 February 1996 the Bjelovar County State Attorney's Office (*Županijsko državno odvjetništvo u Bjelovaru*) asked the investigating judge at the Bjelovar County Court to open an investigation in respect of the applicant on suspicion that he had committed the bank robbery.

24. The investigating judge opened the investigation on the same day. During the investigation, the investigating judge questioned bank employees Z.S., M.Kol. and M.Kom., and a witness, M.S. The bank employees Z.S. and M.Kol. testified that they had seen the applicant before and that his physical appearance resembled that of the bank robber.

25. On 4 March 1996 the applicant gave his oral evidence. He denied that he had committed the bank robbery and complained that he had been ill-treated at the police station and pressured to confess to the charges. The police had also shown him a blue winter cap and a green scarf and asked him to confirm that they belonged to him. As to the manner in which the police had taken and packed the samples of his hair, nails and clothes, the applicant stated:

“When I was taken to the police station for the second time for questioning, the police took my trousers and shirt and [samples of] my hair for forensic analysis. I pulled out a couple of locks of hair myself. I was not present while they packed my clothes and hair for analysis.

They also cut my nails and pulled some hair from my arm and sent them for analysis.

...

... The items that were taken from me, namely the clothes and the samples of hair, were taken in a separate room, not the room where I was held waiting for questioning. ... Every sample was taken in another room and the sample which I gave in each room remained in that room. I don't know where my clothes and the samples of my hair were then taken.”

26. On 5 March 1996 the Bjelovar County State Attorney's Office indicted the applicant in the Bjelovar County Court on charges of armed robbery.

27. At a hearing on 3 April 1996 the applicant denied all the charges against him. He reiterated his allegations of ill-treatment by the police and complained that the manner in which the samples had been taken and packed for the forensic analysis had allowed for the possibility of tampering with the evidence. The applicant also explained that the samples of his hair had been first taken in one room by police officer T.L. and another police officer whose name he did not know, and then again in another room by police officers T.H., Z.N. and M.

28. At the same hearing the bank employees Z.S., M.Kol. and M.Kom. gave their oral evidence.

29. Z.S. testified that she knew the applicant and that the applicant's voice was not similar to that of the bank robber. M.Kol. testified that she had seen the skin on a small part of the bank robber's face and that it had been skin of a younger person; in any event younger and different from the applicant's facial skin, although the part of the face which she had seen through the mask could have been the applicant's. She also stated that she had seen some of the bank robber's hair, which had been similar to the applicant's. The witness M.Kom. testified that the applicant's physical appearance was similar to the bank robber's.

30. The applicant contended before the trial court that the records of the on-site inspection and the taking of the samples were not complete in that

not all the actions had been documented. He therefore requested that the police be ordered to provide the names of all the forensic technicians involved and that they be summoned as witnesses. The applicant also requested that the forensic experts who had drafted the forensic reports be called to give evidence about the possibility of contamination between one seized item and another. Furthermore, he asked the trial court to order a reconstruction of the events so that an identification could be made in the setting in which the event had taken place, and that his alibi be verified. Finally, the applicant asked that the rubber gloves used by the bank robber be inspected at the hearing.

31. The trial court refused the applicant's requests regarding the taking of evidence as irrelevant, and concluded the hearing.

32. On the same day the Bjelovar County Court found the applicant guilty of the bank robbery and sentenced him to five years' imprisonment, imposing a confiscation order on him in the amounts of 8,410 Croatian kunas, 1,000 Austrian schillings, 3,490 German marks, 100 Australian dollars, 100,000 Italian liras, 12 Canadian dollars, and 20 Swedish kronas. The relevant part of the judgment reads:

"The accused stated that ... on the critical occasion he had ... arrived at the Nazaret bar in Garešnica at 9.30 p.m., and there he had heard that a bank in Garešnica had been robbed that same night. Soon afterwards the police had arrived and asked him to come with them. He had been kept in a police station that whole night and had been released at 5 a.m. the next morning. At about 2 p.m. the next day he had again been asked to come to the police station, and the police officers had asked him to confess that he had robbed the bank. He had been ill-treated, they had beaten him, but he could not confess to something he had not done. His clothes had then been taken from him, as well as samples of his hair, but he had not been present when the samples had been taken from the clothes and when they had been packed and sent for analysis. He argued that the fibres [from his clothes] had been transferred to the other clothes by the items being rubbed against each other ... so the evidence thus obtained had been planted by the police.

...

The request by the defence to obtain from the Garešnica Police Station the names of the officers who carried out the on-site inspection and took the samples, and for them to be heard as witnesses ... was refused because the case file contains written records on the on-site inspection and written reports on all steps carried out at the preliminary stage of these proceedings, so that there is no need to hear the officers who carried out those acts.

The request by the defence for forensic experts D.K. and J.K. to be heard concerning the possibility that there was a transmission of fibres from one item to another was also refused because it is well known that such traces can be transmitted through various means such as by rubbing etc., so it was not necessary to hear expert witnesses on this. The court also took into account the fact that there had been no objection to the forensic reports.

...

Witnesses Z.S., M.Kol. and M. Kom., the bank employees, gave identical descriptions of the conduct of the disguised person who had entered the bank at the relevant time, shortly before 7.00 p.m., and [they gave identical descriptions of] the clothes he had been wearing. They stated that the person at issue had been disguised, wearing an improvised mask made from a cap. Around his neck he had had a winter scarf, and he had been wearing a dark women's overcoat. Underneath the overcoat he had been wearing a purple skirt and trousers. This person had pointed a gun and started shouting that this was a bank robbery; he had demanded money and threatened to kill [the bank employees]. He had then put a crate on the counter and asked for the money. M.Kol. had given him the money, putting it in the crate, after which the disguised person had left the bank. The said witnesses also testified that the person in question resembled the accused in his physical appearance, but that they had not recognised him as the accused, although the accused was known to them. Moreover, the witness M.Kol. testified that she had momentarily seen a part of the disguised person's face but she thought that that person was younger than the accused.

...

In view of the evidence given by the witnesses as to what the disguised bank robber had been wearing when he entered the bank, and the Forensic Centre's report concerning the fibres and strands of hair found on the items and clothes seized from the accused, there is no doubt that the accused is the disguised person who entered the bank at the time of the events, and that he was disguised in the clothes which were found during the on-site investigation in a nearby residential building.

...

This court cannot accept the applicant's argument that this evidence was planted by the police, because the relevant laws prescribe in detail the procedure in such situations as regards the taking of samples, packing them and sending them for forensic analysis, and there are written records on all the steps taken, so that any doubt as to whether, intentionally or unintentionally, fabric fibres or hairs were transferred from one set of clothes to another is excluded, and this court considers that there is no reason to question the authenticity of this evidence.

..."

33. On 3 May 1996 the applicant lodged an appeal before the Supreme Court (*Vrhovni sud Republike Hrvatske*), reiterating his previous arguments regarding the evidence in issue. He contended that although when the samples of his hair and clothes were packed for the analysis he was detained at the police station, the police had not allowed him to be present during the packing of the samples and therefore the relevant evidence could have been planted and otherwise tampered with.

34. On 7 January 1998 the Supreme Court dismissed the applicant's appeal, endorsing the findings of the first-instance court.

35. On 9 February 1998 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), reiterating his previous arguments about the manner in which the evidence had been gathered by the trial court. In his constitutional complaint the applicant gave

his address in Garešnica but stated that he was detained in Bjelovar Prison (*Zatvor u Bjelovaru*).

36. On 11 February 1998 the applicant began a five-year prison sentence to which he had been sentenced in another set of criminal proceedings. He was transferred from Bjelovar Prison to Zagreb Prison (*Zatvor u Zagrebu*). He was detained in Zagreb Prison until 6 March 1998, when he was transferred to Lepoglava State Prison (*Kaznionica u Lepoglavi*).

37. On 9 March 1998 the applicant lodged a request for the extraordinary mitigation of his sentence (*zahtjev za izvanredno ublažavanje kazne*) and a request for extraordinary review of a final judgment (*zahtjev za izvanredno preispitivanje pravomoćne presude*).

38. In course of the Bjelovar County Court's examination of the circumstances surrounding the applicant's request for the extraordinary mitigation of his sentence, on 13 March 1998 Lepoglava State Prison informed the Bjelovar County Court that the applicant was detained in that prison.

39. On 16 March 1998 the Constitutional Court informed the Bjelovar County Court that the applicant had lodged a constitutional complaint and asked for the case file to be forwarded to it.

40. On 19 March 1998 the Bjelovar County Court declared the applicant's request for extraordinary review of a final judgment inadmissible since it had been lodged against the judgment of the Supreme Court, which was not possible under the relevant domestic law.

41. On 2 April 1998 the Bjelovar County Court forwarded the case file to the Supreme Court in connection with the applicant's request for the extraordinary mitigation of his sentence and recommended that the request be dismissed as ill-founded.

42. A copy of the entire case file was also sent to the Constitutional Court on 3 April 1998.

43. On 17 June 1998 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded, endorsing the reasoning of the lower courts.

44. The decision of the Constitutional Court was sent to the applicant's address in Garešnica on 6 July 1998 but it was returned to the Constitutional Court with a note that it had not been possible to serve it since the applicant was not at that address.

45. On 12 August 1998 the Supreme Court dismissed the applicant's request for the extraordinary mitigation of his sentence as ill-founded.

46. On 4 and 17 September 1998 the Constitutional Court again attempted to serve its decision of 17 June 1998 on the applicant at his address in Garešnica. Each time the correspondence was returned, with a note that the applicant was not at that address.

47. The Constitutional Court placed the decision on its public notice board on 22 September 1998, where it remained until 30 September 1998.

48. On 19 January 1999 the Garešnica Municipal Court (*Općinski sud u Garešnici*) instituted enforcement proceedings in respect of an order for the confiscation of the proceeds of crime. However, on 24 June 1999 the enforcement proceedings were discontinued since it had been impossible to enforce the order on account of the applicant's lack of any financial means.

49. On 26 September 2001 the applicant was released from Lepoglava State Prison on parole.

50. Since he had not received any decision from it, on 19 September 2002 the applicant urged the Constitutional Court to decide on his constitutional complaint.

51. On 20 March 2009 the applicant's lawyer requested the Constitutional Court to inform him as to the status of the applicant's constitutional complaint.

52. On 27 March 2009 the Constitutional Court served its decision of 17 June 1998 on the applicant's representative.

II. RELEVANT DOMESTIC LAW

53. The relevant provision of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010) reads as follows:

Article 29

“(1) Everyone suspected of or charged with a criminal offence shall have the right to:

- a fair hearing before the competent court established by law;

...

(2) Evidence unlawfully obtained cannot be used in court proceedings.”

54. The relevant provision of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002) reads as follows:

Section 30

“(1) The Constitutional Court shall serve a certified copy of its decision on the parties to the proceedings.

(2) When a decision or other act of the Constitutional Court, for any reason whatsoever, cannot be served on the parties, it shall be put on the public notice board of the Constitutional Court.

(3) It shall be considered that the decision has been served after it has been displayed on the Constitutional Court's public notice board for eight days.

..."

55. The relevant provision of the Criminal Code of the Republic of Croatia (*Krivični zakon Republike Hrvatske*, Official Gazette nos. 32/1993, and 98/1993) provides:

Article 127

"(1) Whoever by the use of force against another person or by the threat of the use of direct force against life or limb, takes another's movable property with the intent of keeping it for himself or of acquiring pecuniary gain for another, shall be punished by imprisonment for one to twelve years.

..."

56. The relevant provisions of the Code of Criminal Procedure (*Zakon o krivičnom postupku*, Official Gazette nos. 53/1991, 91/1992, 34/1993, 38/1993, and 28/1996) provide:

Article 74

"(1) A simultaneous record shall be drafted in respect of every action taken in the course of criminal proceedings, while the action is taking place, or, if that is not feasible, then immediately after.

..."

Article 75

"(1) The record shall state the name of the state authority taking the action, the place of the action, the day and time when the action begins and ends, the first and last names of all the persons present, and the capacity in which they are participating in the action, as well as an indication of the criminal case in respect of which the action is being taken.

(2) The record has to contain all necessary information on the progress and the subject matter of the action. ... If in the course of the action certain objects or files have been seized, it shall be noted on the record, and the seized items shall be appended to the record or it shall be noted where these items are stored.

(3) In the course of an action such as on-site inspection, the search of a flat or a person, or a line-up (Article 223), shall be recorded on the record all information which is important for such action or for the identification of the objects (description, the measurements of the objects or traces, markings on the objects, etc.), and any sketches, drawings, plans, photographs, video recordings, etc. made shall be noted on the record and appended to it."

Article 77

“(1) The defendant, persons participating in the action, parties, defence counsel and the victim, if they are present, shall have the right to read the record or to have it read to them. ... “

Article 337

“(1) The court’s judgment shall be based only on the facts and the evidence taken during the hearing.

... ”

57. The relevant provisions of the amended Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012) provide:

Article 502

“...

(2) The relevant provisions concerning the reopening of the criminal proceedings shall be applicable in the case of a request for revision of any final courts’ decision in connection with the final judgment of the European Court of Human Rights by which, in respect of the defendant, a violation of the rights and freedom under the Convention for the Protection of Human Rights and Fundamental Freedoms has been found.

(3) The request for reopening of the proceedings in connection with the final judgment of the European Court of Human Rights can be lodged within a thirty-day time limit starting from the moment of the finality of the judgment of the European Court of Human Rights.”

Article 574

“...

(2) If prior to the entry into force of this Code a decision was adopted against which a legal remedy is allowed pursuant to the provisions of the legislation relevant to the proceedings [in which the decision was adopted], ..., the provisions of that legislation shall be applicable [to the proceedings concerning the remedy], unless otherwise provided under this Code.

(3) Articles 497-508 of this Code shall be accordingly applicable to the requests for the reopening of the criminal proceedings made under the Code of Criminal Procedure (Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 62/2003, and 115/2006).”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

58. The applicant complained that he had not had a fair trial as required by Article 6 § 1, which, in so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

1. Compliance with the six-month time-limit

(a) The parties' arguments

59. The Government submitted that the final decision in the present case was the decision of the Constitutional Court of 17 June 1998 which, after that court had been unable to serve the decision on the applicant, had been displayed on the public notice board from 22 to 30 September 1998. Thus, in the Government's view, the six-month time-limit had started to run on 1 October 1998 and expired on 1 April 1999. Furthermore, the fact that in September 2002 the applicant had urged the Constitutional Court to decide on his constitutional complaint, and then in March 2009, through his representative, had asked the Constitutional Court to inform him as to the status of his case, suggested that the applicant and his lawyer had failed to demonstrate the necessary diligence in complying with the six-month time-limit since the application had been lodged with the Court only in June 2009.

60. The applicant argued that the Constitutional Court had failed to properly serve its decision of 17 June 1998 on him. He pointed out that in his constitutional complaint he had indicated that he was detained and it had been more than clear from the case file that he was in prison when the Constitutional Court attempted to serve its decision at his address in Garešnica. Therefore, in his view, the six-month time limit could not be calculated as the Government suggested.

(b) The Court's assessment

61. The Court reiterates that it may only deal with an application if it is lodged with the Court within the six-month time-limit. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time, as well as to protect the authorities and other persons concerned from being under

any uncertainty for an extended period of time. Finally, it should provide the possibility of ascertaining the facts of the case before the chance to do so fades away, making the fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

62. The Court notes in the present case that when lodging his constitutional complaint with the Constitutional Court the applicant clearly indicated that he was detained in Bjelovar Prison, thus leaving no doubt as to his current place of residence (see paragraph 35 above). Moreover, the applicant's complaint to the Constitutional Court concerned criminal proceedings in which he had been sentenced to a five-year term of imprisonment and there was sufficient information in the case file examined by the Constitutional Court to enable it to ascertain the applicant's whereabouts (see paragraphs 38 and 42 above). However, despite being aware that the applicant could not have been at his place of residence in Garešnica, the Constitutional Court insisted on serving its decision at that address. Consequently the decision was not served on the applicant and he learned about it only in March 2009.

63. As to the Government's argument that the applicant failed to demonstrate the necessary diligence in seeking to obtain the Constitutional Court's decision, the Court notes that it was the obligation of the Constitutional Court under section 30 of the Constitutional Court Act to serve its decision on the applicant (see, by contrast, *Mutluk Ölmez and Yıldız Ölmez* (dec.), no. 39464/98, 1 February 2005), and therefore the necessary diligence should have been employed by that court before shifting the burden of any lack of diligence onto the parties (see, for example, *Gjurašin v. Croatia* (dec.), 51802/09, 19 June 2012). In this connection, the Court notes that it has previously held that parties to proceedings cannot be required to enquire day after day whether a judgment that has not been served on them has been delivered (see *Papageorgiou v. Greece*, 22 October 1997, § 32, *Reports of Judgments and Decisions* 1997-VI).

64. Against the above background, in view of the fact that the Constitutional Court ignored the information available to it concerning the applicant's whereabouts and insisted on serving its decision at an address at which the applicant was clearly not residing at the time, the Court considers that the six-month time-limit should be calculated from the time when the applicant became aware of the Constitutional Court's decision (see *Worm v. Austria*, 29 August 1997, § 33, *Reports* 1997-V). The decision of the Constitutional Court was served on the applicant's representative on 27 March 2009; the applicant lodged his application with the Court on 9 June 2009, that is, within the six-month time-limit. Therefore, the Government's objection must be rejected.

2. *Non-exhaustion of domestic remedies*

(a) *The parties' arguments*

65. The Government submitted that the applicant had failed to exhaust all available and effective domestic remedies since he did not complain about the actions of the police officers through the police chain of command, and he had failed to complain to the Head of the Forensic Centre about that Centre's work on his case. Moreover, the applicant had failed to lodge a criminal complaint against the police officers for their alleged misconduct in the course of their duties.

66. The applicant considered that he had exhausted all domestic remedies.

(b) *The Court's assessment*

67. 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).

68. 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 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). The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness.

69. Thus, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI, and *Barta v. Hungary*, no. 26137/04, § 45, 10 April 2007). Remedies available to a litigant at the domestic level are considered effective if they prevent the alleged violation or prevent it from continuing, or if they provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

70. The Court notes that throughout the proceedings before the Bjelovar County Court the applicant argued that the evidence against him was unlawful since it had been tampered with by the police and he had had no effective opportunity to verify the procedure in which it had been obtained. Moreover, the applicant complained before the higher domestic courts that he had had no effective opportunity to challenge the use of such evidence

during the trial. His complaints were examined by both the Supreme Court and the Constitutional Court. It follows that in the course of the domestic proceedings against him the applicant afforded the domestic authorities sufficient opportunity to address his Convention grievances.

71. As to the Government's argument that the applicant failed to lodge disciplinary complaints against the forensic experts, and disciplinary and criminal complaints against the police officers, the Court notes that the applicant's complaint concerns only the alleged lack of fairness of the criminal proceedings at issue. In the Court's view, such issues should be considered in the context and course of the proceedings concerned, without the need for the applicant to pursue other proceedings (see, *mutatis mutandis*, *Golubović v. Croatia*, no. 43947/10, § 41, 27 November 2012).

72. Against the above background, the Court rejects the Government's objection.

3. Conclusion

73. 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' arguments

74. The applicant contended that the manner in which the evidence had been taken in the criminal proceedings against him on charges of armed robbery ran counter to the principles of a fair trial, because the clothes and other samples had been taken and packed without him being present. He had also claimed before the national courts that the police had tampered with the evidence at issue by rubbing the two sets of clothes against each other and planting some of his hair on the clothes discarded by the bank robber. However, the national courts had ignored this line of defence and had refused to examine the police officers and the experts concerned. In this connection, the applicant pointed out that the trial had been concluded after the first hearing and that the trial panel had without any good reason dismissed all his requests for further evidence to be taken in connection with his arguments.

75. The Government argued that there was no possibility that the evidence could have been tampered with since every item seized had been packed separately, after which it had been marked and then opened only during the examination by the forensic experts. All the material evidence had been seized and packed by a specially trained forensic technician and

while he had been packing the material, a police officer had simultaneously drafted the seizure report, which the applicant had then signed. The forensic experts had used different rubber gloves when handling different items, and the surface on which they had worked, as well as their instruments, had been thoroughly cleaned after the examination of each item. The Forensic Centre was a member of the European Network of Forensic Science Institutes (ENFSI) and it had applied all the relevant guidelines and standards. Therefore, had the experts noticed any problem with the manner in which the evidence had been packed, they would have noted it in their reports, which they had not done in the present case. The Government insisted that the applicant had been present while the evidence was packed, and invited him to prove otherwise. In the Government's view, even if the samples had been packed together there would have been no possibility of contamination. Finally, the Government considered that the proceedings as a whole had been fair and noted that the impugned evidence had not been the sole or decisive evidence in the applicant's case. The applicant had been afforded the opportunity to bring his complaints before the higher domestic courts, all his arguments had been duly taken into consideration, and there had been no arbitrariness in the domestic courts' findings.

2. *The Court's assessment*

(a) **General principles**

76. 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. Article 6 may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275, and *Salduz v. Turkey* [GC], no. 36391/02, § 50, 27 November 2008).

77. The Court has held on many occasions that its duty, pursuant to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140; *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports* 1998-IV; and *Heglas v. the Czech Republic*, no. 5935/02, § 84, 1 March 2007). It is therefore for the national courts to

assess the evidence before them, as well as the relevance of any evidence the accused seeks to adduce. The Court must, however, determine whether the proceedings considered as a whole, including the way in which evidence was taken, were fair, as required by Article 6 § 1 of the Convention (see *G.B. v. France*, no. 44069/98, § 59, ECHR 2001-X; *Kangasluoma v. Finland* (dec.), no. 48339/99, 21 May 2002; and *Laska and Lika v. Albania*, nos. 12315/04 and 17605/04, § 57, 20 April 2010).

78. In determining whether the proceedings as a whole were fair, regard must be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, amongst many others, *Sevinç and others v. Turkey* (dec.), no. 8074/02, 8 January 2008; *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009; and *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010). In this context the Court reiterates that, under Article 6 § 1 of the Convention, its task is to establish whether the evidence produced for or against the accused was presented in such a way as to ensure a fair trial (see *Barım v. Turkey* (dec.), no. 34536/97, 12 January 1999).

(b) Application of these principles to the present case

79. In the present case the Court must examine whether the requirements of a fair trial have been satisfied as regards the way in which the forensic evidence was obtained and used in the criminal proceedings against the applicant. Specifically, the Court must examine whether the applicant was given the opportunity to challenge the authenticity of the forensic evidence and oppose its use, taking into consideration whether the circumstances in which the strands of the applicant's hair and fibres from his clothes were found and packed during the criminal investigation cast doubt on the reliability and accuracy of that evidence.

80. The Court notes that from the very initial stages of the proceedings the applicant complained that the samples of his hair and nails, and his clothes, had been taken in one room and then packed in another without him being present (see paragraph 25 above). In denying the charges against him, the applicant argued throughout the proceedings that the evidence had been tampered with by the police and that the procedure in accordance with which his samples had been taken allowed for the possibility of tampering with the evidence and the planting of inculpatory traces (see paragraphs 25, 27, and 33 above).

81. The Government submitted that the applicant had been present during the packing of the samples, whereas the applicant claimed otherwise. However, the criminal case file submitted by the Government shows that the

only document concerning the taking of the samples is a police record which indicates only that the applicant's trousers and t-shirt were taken (see paragraph 13 above). The case file contains no record on the procedure in accordance with which the applicant's samples were taken and packed for forensic analysis, even though Article 75 of the Code of Criminal Procedure requires a number of details to be recorded in such a situation (see paragraph 56 above). It is true that the request by which the police commissioned a forensic report noted that a new pair of gloves had been used each time a different item had been packed (see paragraph 17 above) but it made no reference to a record supporting such assertion.

82. Therefore, in the absence of any relevant records or an otherwise clearly documented procedure for obtaining and packing forensic samples, the allegations made by the applicant could not reasonably have been countered without a thorough examination of all the circumstances in which the impugned evidence was obtained and packed.

83. In the present case the alleged flaws at the pre-trial stage of the procedure were never examined by the trial court, despite the fact that the applicant asked the trial court to order the police to disclose the names of the forensic technicians who had packed the samples and requested that they, as well as the forensic experts who had drafted the forensic reports, be cross-examined at the trial. In addition, he named the police inspectors who had taken the samples for forensic analysis. The applicant reasoned his request with reference to the necessity that the circumstances of the taking and packing of the samples be elucidated, as well as the possibility that there had been a transmission of traces between one item and another, namely the bank robber's clothes and the applicant's clothes and the samples of his hair. Thus, it does not appear that the applicant's request was vexatious and there is no doubt that it was sufficiently reasoned, relevant to the subject matter of the accusation and it could arguably have strengthened position of the defence or even led to the applicant's acquittal had it been confirmed that there had been an intentional or unintended transmission and contamination of traces (see *Polyakov v. Russia*, no. 77018/01, § 34, 29 January 2009).

84. The trial court dismissed the applicant's request, concluding that the actions taken during the pre-trial stage of the proceedings were sufficiently documented, although in fact it had no relevant record on the procedure in accordance with which the samples had been taken and packed. By dismissing all requests by the defence and accepting all the prosecution arguments and evidence, the trial court deprived the applicant of any practical opportunity to effectively challenge the authenticity of the evidence or to oppose its use.

85. As to the extent to which the domestic courts relied on such evidence when convicting the applicant, the Court notes that the conclusions of the trial court indicate that there was no other concrete and direct evidence

proving that the applicant was the bank robber, and that the witness statements concerning the identity and description of the bank robber were inconclusive (see paragraphs 29 and 32 above). Therefore, the only evidence actually linking the applicant with the bank robbery were the fibres from his clothes and the strands of his hair found on the clothes worn by the bank robber (compare *Erkapić v. Croatia*, no. 51198/08, §§ 85-87, 25 April 2013).

86. The foregoing considerations are sufficient to enable the Court to conclude that the lack of any action by the trial court to examine the applicant's objections as to the manner in which the forensic evidence was obtained and packed during the investigation, in the absence of a detailed report in that regard, created such a procedural disadvantage to the applicant's detriment that the proceedings as a whole fell short of the requirements of a fair trial.

87. There has therefore been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. The applicant also complained under Article 5 of the Convention, but without any further substantiation.

89. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed pecuniary damage in the amount of 547,500 Croatian kunas (HRK) on account of loss of income while serving his prison sentence, HRK 8,410 and 2,000.61 euros (EUR) in respect of the order for the confiscation of the proceeds of crime, and HRK 500,000 in respect of non-pecuniary damage.

92. The Government considered the applicant's claim excessive, unfounded and unsubstantiated, and that there was no causal link between the violations complained of and the applicant's pecuniary claims.

93. In view of the fact that the applicant merely set out the amount claimed in respect of pecuniary damage and failed to substantiate his request any further or prove that the order for the confiscation of the proceeds of crime had actually been enforced, the Court cannot discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

94. The applicant also claimed HRK 10,799.94 for the costs and expenses incurred before the domestic courts, and HRK 7,462.70 for those incurred before the Court.

95. The Government argued that the applicant had failed to substantiate his claim for costs and expenses.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000, covering costs under all heads, for costs and expenses in the domestic proceedings and in the proceedings before the Court.

C. Default interest

97. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares*, the complaint concerning the applicant's right to a fair trial admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President