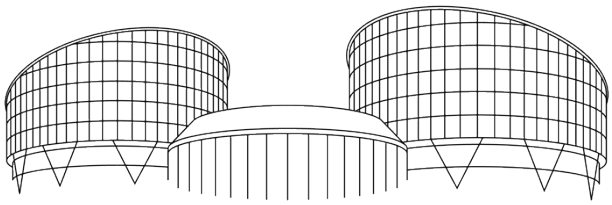

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VANJAK v. CROATIA

(Application no. 29889/04)

This version was rectified on 27 April 2010
under Rule 81 of the Rules of Court

JUDGMENT

STRASBOURG

14 January 2010

FINAL

14/04/2010

This judgment may be subject to editorial revision.

In the case of Vanjak v. Croatia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 29889/04) 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 Zdravko Vanjak ("the applicant"), on 12 July 2004.

2. The applicant was represented by Mrs B. Ivanišević, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 11 January 2008 the President of the First Section decided to communicate the complaint concerning the applicant's right to be presumed innocent to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). On June 2009 the Court communicated a further complaint concerning the alleged unfairness of the disciplinary proceedings against the applicant.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in Karlovac.

1. Disciplinary proceedings against the applicant

5. From 5 August 1990 the applicant served as a police officer in the Karlovac Police Department (*Policijska uprava karlovačka*), namely as the Assistant Chief of the Ribnik sector for State border security. On 28 May

1996 he was called in to a police station by his colleagues and then questioned in connection with a suspicion that he had acted as an intermediary in procuring a forged certificate on citizenship for a certain H.Ć. In a written statement of 28 May 1996 made by the police the applicant confessed to having acted as an intermediary in procuring an illegal certificate of Croatian citizenship for H.Ć. The police also took written statements from two other persons, H.Ć. and B.J., without the applicant being present. These statements were not communicated to the applicant.

6. On 29 May 1996 the Chief Officer of the Karlovac Police Department asked that disciplinary proceedings be instituted against the applicant on suspicion that he had committed a serious breach of work discipline. This suspicion was based on a criminal complaint meanwhile lodged against the applicant, his own written confession and statements of several other individuals given before the police.

7. On 26 June 1996 disciplinary proceedings were instituted against the applicant before the Karlovac Police Department Disciplinary Court. A hearing was held on 10 October 1996 in the presence of the applicant and his counsel. At the hearing the applicant's confession of 28 May 1996 was read out. The applicant stated that he had been questioned by his colleagues in a police station about the case of H.Ć. The questioning had lasted the whole night, and at the end he had signed the statement because he had not wanted to be questioned any longer. The applicant further stated that he knew H.Ć. but that he had not participated in any dealings concerning his certificate of citizenship. He also explained that immediately afterwards he had lodged an objection on his questioning with the officer on duty. In his closing arguments the applicant's defence counsel, *inter alia*, objected that the statements of B.J. and H.Ć. had not been read out and that therefore the defence had no opportunity to analyse these statements because they did not know their content.

8. In a judgment of 10 October 1996 the Disciplinary Court found it established that the applicant had acted as an intermediary between H.Ć. and two other persons in order to obtain a forged certificate of Croatian citizenship for H.Ć. and that he had passed on a sum of 3,000 German Marks (DEM) from H.Ć. to a certain B.P. who had passed it on to a certain L.P., a clerk in the citizenship registry, asking the latter to make a forged certificate. The operative part of the judgment reads:

> "Zdravko Vanjak ...
>
> is guilty
>
> because during January 1996 he took from H.Ć. ... a sum of DEM 3,000 and gave it to B.P. ..., so that the latter would act as a further intermediary in bribing L.P. ... to issue a forged certificate of Croatian citizenship in the name of H.Ć., which L.P. did on 26 January 1996,

by which he committed a serious breach of work discipline under section 82 paragraph 1(14) of the Interiors Act (*Zakon o unutarnjim poslovima*) and section 49 paragraph 1(11) of the Rules on employment of the employees of the Ministry of Interior of the Republic of Croatia,

Owing to which a disciplinary measure under section 87 of the Interiors Act

termination of employment

is to be applied."

9. The judgment was based on the applicant's written statement of 28 May 1996 in which he confessed and the two other statements given to the police by H.Ć. and B.J. The applicant's contention, that he had signed the statement under duress since he had been interviewed by his colleagues for the whole night, that the notes of the interview had been amended several times and that he had been given no right such as to make a telephone call, was dismissed. The disciplinary court ordered the applicant's dismissal. The reasoning of the judgment reads as follows:

"Through a request for the institution of disciplinary proceedings submitted by the Chief of the Karlovac Police Department ... of 29 May 1996 the defendant Zdravko Vanjak was charged with a serious breach of work discipline, specified as to its factual background and legal characterisation in the operative part of this judgment.

The Disciplinary Court of the Karlovac Police Department initiated proceedings by its decision ... of 26 June 1996.

A decision by the Chief of the Police Department ... of 29 May 1996 removed Zdravko Vanjak from his duties in the Ribnik Border Police Station with effect from 29 May 1996 on account of a reasonable suspicion that he had committed a serious breach of work discipline by committing a criminal offence under Article 229 paragraph 1 of the Criminal Code of the Republic of Croatia, and that his further service would harm the interests of the service.

During the disciplinary proceedings the president of the court read aloud the written statement of Zdravko Vanjak of 28 May 1996.

In his defence Zdravko Vanjak does not accept[1] his written statement. He adds that he was being questioned by the police, having being called on the false pretext that he was needed in connection with some customs business. They did not secure his rights such as using the telephone and so on.

He states that he knows H.Ć. but that he was not present at any dealings in connection with a certificate of citizenship or the taking of any money.

Furthermore, he retracts his written statement which he signed because he was tired of being browbeaten by his colleague policemen who questioned him, [he wanted them] to cease psychologically ill-treating him.

For example, the record of the interview reads that his superior was present, which is untrue because his superior entered [the interview room] for a few minutes only and

[1] Rectified on 27 April 2010: the text was "In his defence Zdravko Vanjak accepts ….".

then immediately left and he did not see him again that day, nor was he present when he signed the written statement.

He also adds that immediately after the interview he drew up a statement concerning the circumstances of the investigation and submitted it to an officer.

In defence of defendant Zdravko Vanjak, his counsel H.K. pointed to grave breaches of procedure, since the statement and records of interviews with the police were admitted as evidence. He also objected that a criminal complaint against the defendant was taken as proof that he had committed [the offence] he has been charged with.

After deliberations and voting the Disciplinary Court dismissed the objections by the defence.

During the proceedings the Disciplinary Court consulted the written statements given by B.J. and recorded under no. 511-05-04/2-4-96 on 28 May 1996; by Zdravko Vanjak recorded under no. 511-05-04/2-4-96 on 28 May 1996; by H.Ć. recorded under no. 511-05-04/2-4-96 on 28 May 1996 and also a criminal complaint against Zdravko Vanjak, no. 511-05-04/2-K-65/96f 28 May 1996.

H.Ć. was not invited to the hearing because his permission to stay in Croatia had been terminated by a decision ... of 28 May 1996, upheld by a decision no. ... of 28 June 1996. [A measure of] prohibition of entry [on the territory of] Croatia has been applied for the period of five years.

After the assessment of all relevant facts established in the proceedings the panel of the Disciplinary Court established that the defendant Zdravko Vanjak is guilty of a serious breach as set out in the operative part of the judgment.

By such conduct the defendant violated existing laws and rules of service since he had committed acts irreconcilable with the police service.

While assessing the disciplinary measure [to be applied] the panel of the Disciplinary Court took as aggravating the fact that the defendant had already been disciplinary punished.

In view of the above, it has been decided as set out in the operative part of the judgment."

10. On a subsequent appeal by the applicant against the judgment of 10 October 1996, the Appellate Disciplinary Court of the Ministry of Interior (*Drugostupni disciplinski sud Ministarstva unutarnjih poslova Republike Hrvatske*) upheld the first instance judgment on 3 December 1996 but altered the qualification of the offence finding that the act in question constituted an offence under Section 82 paragraph 1 (13 and 17) of the Interiors Act which refer to inappropriate conduct, rather than paragraph 1(14), on the ground that:

"... no one, including the defendant, can be considered liable for a criminal offence as long as [his or her liability] has not been established in a final judgment (Article 28 of the Constitution)."

11. The applicant then lodged a complaint against the disciplinary courts' judgments with the Administrative Court (*Upravni sud Republike*

Hrvatske) whereby he complained, *inter alia*, of the fact that the statements given to the police could not have served as evidence in the disciplinary proceedings against him. He also complained that he had no access to the evidence relied on by the disciplinary courts, namely the statements given by two persons to the police. The complaint was dismissed on 6 May 1998 on the ground that in the disciplinary proceedings it had been established that the applicant had committed the offence in question and that the use of the impugned statements had been correct.

2. Criminal proceedings against the applicant

12. On 24 June 1996, i.e. parallel to the institution of the disciplinary proceedings, the Karlovac State Attorney's Office (*Općinsko državno odvjetništvo u Karlovcu*) lodged a request that an investigation be opened against the applicant and three other individuals on a suspicion that they had acted as intermediaries between H.Ć. and a clerk of the registry of citizens, passing a sum of DEM 3,000 to the latter in order to issue a certificate of Croatian citizenship for H.Ć. and thus committed a criminal offence under Article 348 paragraph 1 of the Criminal Code in connection with Article 37 of the Criminal Code.

13. During the investigation the suspects and a witness were heard by an investigation judge. The applicant remained silent.

14. On 5 June 1998 the Karlovac State Attorney Office sought that the criminal investigation against the applicant be discontinued on the ground that the statement given by H.Ć. showed that the applicant had procured him a certificate of Croatian citizenship but that he had given no money for that to the applicant. Hence, there was insufficient evidence that the applicant had committed a criminal offence.

15. On 18 June 1998 an investigation judge of the Karlovac County Court discontinued the criminal investigation against the applicant owing to the above request of the State Attorney's Office.

3. Proceedings for the reopening of the disciplinary proceedings against the applicant

16. On 1 July 1998 the applicant requested the reopening of the disciplinary proceedings against him. He argued in support of his request that the factual basis for disciplinary proceedings as well as the criminal proceedings was identical and as the latter had been discontinued due to lack of evidence there would likewise be no basis upon which disciplinary sanctions ought to be imposed.

17. On 15 July 1998 the Karlovac Police Department Disciplinary Court declared the request inadmissible, finding the fact that the criminal proceedings against the applicant had been discontinued irrelevant in respect of the decision on his disciplinary responsibility. This decision was upheld by the Disciplinary Appeal Court of the Ministry of Interior on 15 September 1998.

18. The applicant then lodged a complaint with the Administrative Court which was dismissed on 20 April 2000. His subsequent constitutional complaint was declared inadmissible on 20 December 2000 as lodged out of time.

4. Constitutional complaint against the decisions adopted in the disciplinary proceedings against the applicant

19. On an unspecified date, following the dismissal of his administrative complaint in the disciplinary proceedings against him, the applicant lodged a constitutional complaint against the Administrative Court's judgment of 6 May 1998, as well as several supplementary submissions complaining that the disciplinary proceedings against him had been unfair. He argued, *inter alia*, that the disciplinary courts found that he had committed a criminal offence although he had not been convicted in the criminal proceedings against him which had been discontinued. He further argued that the statement he had made to the police was not a valid evidence under domestic law and as such should have been removed and that the statements given to the police, relied on in finding him disciplinary responsible, had never been communicated to him, nor had they been produced at the hearing before the disciplinary courts.

20. On 4 February 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint. The relevant part of that decision reads as follows:

> ".. the Constitutional Court finds it useful to comment on the applicant's arguments concerning the legal nature of disciplinary proceedings.
>
> First and foremost, the applicant contends that the State Attorney's Office discontinued criminal prosecution against him for lack of evidence that he had committed a criminal offence consisting in the same acts [as those serving as a basis] for the judgments [adopted] in the disciplinary proceedings. The Constitutional Court emphasises that the ground for the applicant's [disciplinary] conviction and the imposed disciplinary measure was his liability for serious breaches of work discipline under section 82 paragraph 2 (13 and 17) of the Interiors Act, and not his liability for a criminal offence.
>
> Criminal and disciplinary liabilities are two separate [types] of liability, which have to be established in two entirely independent sets of proceedings with no mutual influence. Liability for serious breaches of work discipline may be established even without a decision of a criminal court, irrespective of the fact that a breach of working duty may at the same time amount to a criminal offence. [The purpose of] disciplinary proceedings is to establish the elements constituting a breach of work discipline. It is not necessary that at the same time the elements of a criminal offence have been satisfied, and in that respect the disciplinary liability is wider than the criminal.
>
> Furthermore, it is to be stressed that although disciplinary proceedings are actually [by their nature] criminal proceedings *sui generis*, they also bear strong features of the administrative proceedings.

There is in principle a lesser risk as to the scope of possible violations of human rights in disciplinary proceedings than in criminal proceedings. Also, the consequences of disciplinary proceedings differ significantly from those of criminal proceedings. Therefore, the application of the [rules of] Code of Criminal Procedure in disciplinary proceedings is only subsidiary, as worded in section 42 paragraph 2 of the Act on Civil Servants (Official Gazette no. 27/2001): 'In the proceedings concerning a serious breach of official duty provisions of the Code of Criminal Procedure shall be applied appropriately...'. Subsidiary application of the Code of Criminal procedure means that its provisions are to be applied according to the nature of the disciplinary proceedings, that is to say that their application is neither obligatory in each instance nor they have to be applied literally.

The above is applicable in respect of the exclusion of the official notes made by the police [to be used] as evidence in criminal proceedings. The official police notes cannot serve as evidence in criminal proceedings owing to the special nature of those proceedings. However, such notes are not illegal evidence *ab initio*, both from the standpoint of some potential criminal proceedings or from that of disciplinary proceedings. They become illegal evidence only if actually used in criminal proceedings. Their use for other (lawful) purposes is not prohibited."

II. RELEVANT DOMESTIC LAW

21. Article 348 paragraph 1 of the Criminal Code (*Kaznenini zakon Republike Hrvatkse*, Official Gazette no. 110 of 21 October 1997) reads:

"Bribing

(1) Whoever gives or promises a gift or other gain to an official in order to perform an official or another act within his or her authority which he or she should not perform or to omit an official or other act which an official is obliged to do, or who acts as an intermediary at such bribing of an official shall be sentenced to imprisonment for a term from three months to three years."

22. The relevant provisions of the Interiors Act (Official Gazette nos. 19/1991, 73/1991, 19/1992, 33/1992, 76/1994, 161/1998 *Zakon o unutarnjim poslovima*) read as follows:

Section 82

"The following shall particularly be considered a serious breach of work discipline:

...

13. inappropriate conduct during or outside the hours of service;

14. any criminal offence incompatible with entering employment with the Ministry [of Interior];

...

17. actions incompatible with the duties of an employee of the Ministry [of Interior] ..."

Section 87

"Breaches of work discipline may entail the following measures:

1. public warning,

2. a fine,

3. dismissal from work.

..."

23. The relevant part of section 42(2) of the Act on Civil Servants (Official Gazette no. 27/2001, *Zakon o državnim službenicima i namještenicima*) reads:

"In the proceedings concerning a serious breach of official duty provisions of the Code of Criminal Procedure shall be applied appropriately ..."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

24. The applicant firstly complained that the disciplinary proceedings against him were unfair, and in particular that the disciplinary courts had relied in their judgments on the statement he had made to the police, which was illegal evidence, as well as on statements given to the police by several persons, which statements had not been communicated to him, nor these persons heard in the proceedings. The applicant relied on Article 6 §§ 1 and 3 of the Convention.

25. The Court is master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by an applicant or a government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172 and *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). Having regard to this, the Court considers that the applicant's complaints are to be examined under Article 6 § 1 of the Convention.

26. The applicant also complained under Article 6 § 2 of the Convention that his right to be presumed innocent had been violated in that the disciplinary courts had found him guilty of a disciplinary offence factually identical with a criminal offence in respect of which an investigation had been opened against him, which at the time had still been pending and which had subsequently been discontinued for lack of evidence.

The relevant part of Article 6 reads:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ...c hearing ... by an independent and impartial tribunal established by law...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

..."

27. The Government contested that argument.

A. Admissibility

1. Article 6 § 1 of the Convention

(a) The parties' arguments

28. The Government argued that Article 6 was not applicable to the disciplinary proceedings against the applicant since they concerned dismissal of a State official.

29. The applicant argued that Article 6 was applicable.

(b) The Court's assessment

30. As to the applicability of Article 6 § 1 of the Convention to the disciplinary proceedings against a civil servant the Court has held that, in principle, there can be no justification for the exclusion from the guarantees of Article 6 for ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that an applicant who is a civil servant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...).

31. In the present case, the proceedings concerned a disciplinary measure, namely the applicant's dismissal from the police. While in the above mentioned *Vilho Eskelinen* judgment the Court gave a list of non-exhaustive examples of "ordinary labour disputes" to which Article 6 should in principle apply, it did not exclude other labour-related proceedings from applicability of that Article. The Court has constantly held that disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to "*contestations"* (disputes) over civil rights within the meaning of Article 6 § 1 (see *Philis v. Greece (no. 2)*, 27 June 1997, § 45, *Reports of Judgments and Decisions* 1997-IV; *Gautrin and Others v. France*, 20 May 1998, § 35, *Reports of Judgments and Decisions*

1998-III; and *W.R. v. Austria*, no. 26602/95, §§ 25 – 31, 21 December 1999).

32. Furthermore, the *Eskelinen* test, as regards the question whether the applicant had access to a court in respect of disciplinary proceedings against him is to be answered in the affirmative. The Court notes in this respect that the applicant's case was examined at two levels by disciplinary courts within the Ministry of the Interiors and after that by the Administrative Court and the Constitutional Court. The Croatian system thus secured the applicant's "right to a court" of which the right of access constitutes one aspect.

33. It follows that Article 6 is applicable under its civil head to the disciplinary proceedings in question (see *Melek Sima Yılmaz v. Turkey*, no. 37829/05, § 19, 30 September 2008; *Olujić v. Croatia*, no. 22330/05, §§ 34 and 44, 5 February 2009; and *Bayer v. Germany*, no. 8453/04, § 39, 16 July 2009).

2. Article 6 § 2 of the Convention

(a) The parties' arguments

34. The Government maintained that Article 6 § 2 was not applicable since the disciplinary proceedings against the applicant could not be regarded as proceedings concerning the determination of a criminal charge against the applicant. The proceedings at issue had examined the applicant's responsibility for disciplinary offences in performance of his duty as a policeman and concerned his dismissal from a public official post.

35. The applicant contested these arguments and stressed the identical factual basis of the criminal and disciplinary proceedings against him.

(b) The Court's assessment

36. The Court notes at the outset that a criminal investigation was opened against the applicant on suspicion that he had acted as an intermediary in order to enable a third person to obtain a false certificate of Croatian citizenship. Therefore, for the purposes of Article 6 the applicant was charged with a criminal offence which attracts application of that provision in respect of these criminal proceedings.

37. The question remains whether there were such links between the criminal proceedings and the parallel disciplinary proceedings as to justify extending the scope of Article 6 § 2 to cover the latter.

38. In this connection the Court reiterates that the scope of Article 6 § 2 is not limited to pending criminal proceedings against an applicant (see *Allenet de Ribemont v. France*, 10 February 1995, Series A no. 308, § 35, and *Diamantides v. Greece* (no. 2), no. 71653/01, §§ 34-35). The Court has also found the provision applicable to judicial decisions taken after the discontinuation of such proceedings (see in particular the following judgments: *Minelli v. Switzerland*, 25 March 1983, Series A no. 62, and *Lutz*, *Englert* and *Nölkenbockhoff v. Germany*, 25 August 1987, Series A

no. 123), or following an acquittal (see *Sekanina v. Austria*, 25 August 1993, Series A no. 266-A; *Rushiti v. Austria*, no. 28389/95, 21 March 2000; and *Lamanna v. Austria*, no. 28923/95, 10 July 2001). Those judgments concerned proceedings relating to such matters as an accused's obligation to bear court costs and prosecution expenses, a claim for reimbursement of his (or his heirs') necessary costs, or compensation for detention, matters which were found to constitute a consequence and the concomitant of the criminal proceedings. The scope of Article 6 § 2 extends as well to various administrative proceedings conducted simultaneously with the criminal proceedings against an applicant or after the conclusion of criminal proceedings ending without a decision finding the accused guilty (see *Stavropoulos v. Greece*, no. 35522/04, 27 September 2007, *Paraponiaris v. Greece*, no. 42132/06, 25 September 2008).

39. The Court further reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Airey v. Ireland*, 9 October 1979, Series A no. 32, § 24, and *Puig Panella v. Spain*, no. 1483/02, § 50, 25 April 2006).

40. As to the present case the Court notes that the disciplinary proceedings against the applicant ran parallel to an investigation on suspicion that he had committed a criminal offence and that the findings of the disciplinary courts had no influence or prejudicial effect on the criminal investigation.

41. However, the Court considers that where the criminal proceedings end prior to the formal indictment, irrespective of the ground for their discontinuation, the lack of a person's criminal conviction shall as to the presumption of innocence be preserved in any other proceedings of whatever nature, including disciplinary proceedings (see, *mutatis mutandis*, *Y v. Norway*, no. 56568/00, § 41, ECHR 2003-II (extracts). Therefore, Article 6 § 2 applies in the circumstances of the present case.

3. Conclusion

42. The Court considers further that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It considers that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

(a) The parties' arguments

43. The applicant argued that the disciplinary proceedings against him had run foul of the requirement of fair trial because the statement he had given to the police had been obtained illegally. He further argued that two

other statements, also given to the police, by B.J. and H.Ć. had been relied on in the judgments of the disciplinary courts although these statements had never been communicated to him, nor had their content been revealed.

44. The Government argued that the proceedings had been fair and that all evidence had been obtained legally.

(b) The Court's assessment

45. The requirements inherent in the concept of fair hearing are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paragraphs 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have a certain relevance outside the strict confines of criminal law (see, *mutatis mutandis*, *Albert and Le Compte v. Belgium*, 10 February 1983, Series A no. 58, § 39), the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases (see *Pitkänen v. Finland*, no. 30508/96, § 59, 9 March 2004).

46. Nevertheless, certain principles concerning the notion of a fair hearing in cases concerning civil rights and obligations emerge from the Court's case-law. Most significantly for the present case, it is clear that the requirement of equality of arms, in the sense of a fair balance between the parties, applies in principle to such cases as well as to criminal cases (see *Feldbrugge v. the Netherlands*, 29 May 1986, Series A no. 99, § 44, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

47. The Court reiterates that 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 or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *Garcia Ruiz v. Spain* [GC] no. 30544/96, ECHR 1999-I, § 28). The Court reiterates further that its duty, according 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. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken and submitted, were fair within the meaning of Article 6 § 1 (see *Dombo Beheer B.V. v. the Netherlands*, cited above, § 31; and *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000 V).

48. In the present case, the Court notes that the finding of the applicant's responsibility for a disciplinary offence relied on his own statement given to the police as well as statements by two persons, B.J. and H.Ć., also given to the police**.** The applicant's statement was given without the presence of his

counsel and those by B.J. and H.Ć. without the presence of the applicant or his counsel. The persons who had given these statements were not heard by the disciplinary courts.

49. In this connection the Court has held that, in the context of criminal proceedings, all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. This does not mean, however, that the statement of a witness must always be made in court and in public if it is to be admitted in evidence; in particular, this may prove impossible in certain cases (see *Asch v. Austria*, 26 April 1991, Series A no. 203, § 27). The use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a rule these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings (see, among other authorities, *Isgrò v. Italy*, 19 February 1991, Series A no. 194-A, § 34, and *Lucà v. Italy*, no. 33354/96, §§ 40-43, ECHR 2001-II).

50. As to the present case, the Court notes that the institution of disciplinary proceedings against the applicant was preceded by police questioning of both the applicant and potential witnesses. The statements given to the police were subsequently used in the disciplinary proceedings. In view of the gravity of the allegations against the applicant and in view of severe consequences, namely loss of employment, the Court considers that the above principles have some bearing in the context of the present case as well.

(i) Statements given to the police by B.J. and H.Ć.

51. The statements by B.J. and H.Ć. were given to the police without the applicant or his counsel being present. The persons who had given these statements were not subsequently called as witnesses before the disciplinary courts and were not heard by that court. Thus, not only the applicant and his counsel never had an opportunity to question these persons who had given the statements, but neither did the members of the Disciplinary Court themselves.

52. The statements at issue had never been communicated to the applicant. The Court also notes that the applicant's counsel in his final arguments objected that these statements had not even been read out at the hearing. In this connection, the Court considers that, independently of whether the case is a civil, criminal or disciplinary one, the right to adversarial proceedings has to be complied with. That right means in principle the opportunity for the parties to court proceedings falling within the scope of Article 6 to have knowledge of and comment on all evidence adduced or observations submitted, with a view to influencing the court's decision (see, for example, *Kerojärvi v. Finland*, judgment of 19 July 1995, Series A no. 322, p. 16, § 42; and *Nideröst-Huber v. Switzerland*, judgment

of 18 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 108, § 24).

53. The Court has already held that the onus was on the competent tribunal to ensure proper participation of a party to the civil proceedings, including by communicating all documents on file (see *H.A.L. v. Finland*, no. 38267/97, § 45, 27 January 2004). In this connection the Court notes that the statements in question were made by potential witnesses and concerned the applicant's involvement in obtaining a forged certificate of citizenship for H.Ć. These statements were relied on in the judgments adopted by the Disciplinary Courts in support of the establishment of the applicant's responsibility. Whatever the actual effect which they may have had on the decisions of the Disciplinary Court, it was for the applicant to assess whether they required his comments.

54. As to the reasoning of the Karlovac Police Department Disciplinary Court referring to the two statements in question, the Court notes that it held as follows:

> "During the proceedings the Disciplinary Court consulted the written statements given by B.J. and recorded under no. 511-05-04/2-4-96 on 28 May 1996; ... by H.Ć. recorded under no. 511-05-04/2-4-96 on 28 May 1996 ..."

However, it did not explain what the content of these statements was and in particular what facts were proven from them and what in those statements led the Disciplinary Court to the conclusion that they supported finding the applicant disciplinary responsible. Thus, by omitting to communicate the statements in question to the applicant and by omitting to state the content of these statements at any stage of the proceedings the national courts involved in the applicant's case prevented him from putting forward any comments or arguments in respect of these statements, although they were relied upon in finding the applicant disciplinary responsible. In sum, the applicant was not provided with sufficient information enabling him to participate properly in the proceedings.

55. What is particularly at stake here is the applicant's confidence in the workings of justice, which is based on, *inter alia*, the knowledge that he had the opportunity to express his views on every document relied on in the subsequent judgment (see *Nideröst-Huber v. Switzerland*, cited above, §§ 27 and 29). Having regard to the purpose of the Convention, which is to protect rights that are practical and effective, and to the prominent place the right to a fair administration of justice holds in a democratic society within the meaning of the Convention, the Court considers that any restrictive interpretation of Article 6 in this respect would not correspond to the aim and the purpose of that provision (see, *mutatis mutandis*, *Delcourt v. Belgium*, cited above, § 25, and *Ryakib Biryukov v. Russia*, no. 14810/02, § 37, ECHR 2008-...).

56. In the present case, respect for the right to a fair trial, guaranteed by Article 6 § 1 of the Convention, required that the applicant be given the opportunity to comment on the statements given to the police by B.J. and

H.Ć. and relied on in the judgments of the disciplinary courts. However, the applicant was not afforded this possibility.

(ii) The applicant's own statement given to the police

57. The Court notes that the applicant's alleged confession to the police was also used as another ground for establishing his disciplinary responsibility. The question arises as to the manner in which the applicant's confession was taken and used in the disciplinary proceedings against him. The Court has already established certain principles as regards its role in respect of allegedly unlawfully obtained evidence in the context of criminal proceedings. Thus, it held that it is not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, unlawfully obtained evidence – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V). In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing 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 *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009).

58. The Court considers that, although Article 6 applies under its civil head in the present case, certain parallels might be drawn with the above principles pertinent to the guarantees of a fair trial in the context of criminal proceedings. This is even more so because the applicant in the present case was firstly questioned by the police, a feature common to the pre-trail stage of criminal proceedings. His alleged confession to the police was later on used in the disciplinary proceedings against him and served as a ground for establishing his disciplinary responsibility.

59. It is true that the applicant had a possibility of challenging his confession, which he did by asserting that it had been obtained under pressure since he had been questioned the whole night and not allowed to contact a lawyer or any other person. However, the national courts gave no satisfactory answer to the applicant's objection. They at no stage called the police officers involved to give their evidence as witnesses at a public hearing where the applicant and his counsel would also be able to question them. Even more so, the national courts in their decisions made no reference at all to the circumstances of the applicant's confession to the police.

60. However, according to the Court's established case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based.

The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain*, 21 January 1999, *Reports of Judgments and Decisions* 1999-I, § 26, and *Helle v. Finland*, 19 December 1997, *Reports* 1997-VIII, §§ 59).

61. In the Court's view, the applicant's objection as to the circumstances of his alleged confession to the police clearly called for further examination by the competent national authorities and in particular required that they give reasons for accepting the applicant's alleged confession, which he subsequently denied, as being accurate and genuine. By failing to satisfy these requirements in the disciplinary proceedings against the applicant, the findings of the national authorities fell short of the guarantees of a fair trial.

(iii) Conclusion

62. The Court concludes that the above-analysed shortcomings in the disciplinary proceedings against the applicant, as regards the use of both the statements given by B.J. and H.Ć. and the applicant's own statement, given to the police, rendered the proceedings, taken as a whole, unfair. That finding leads the Court to conclude that there was a breach of Article 6 § 1 of the Convention.

2. Article 6 § 2 of the Convention

(a) The parties' arguments

63. The applicant maintained that the judgments of the disciplinary courts amounted to a violation of his right to be presumed innocent in that they had found that he had committed an act factually identical to a criminal offence in respect of which criminal proceedings had been opened against him, had actually been pending at the time and had subsequently been discontinued for lack of evidence. He argued that this amounted to a violation of his right to be presumed innocent.

64. The Government argued that the criminal proceedings against the applicant concerned the criminal offence of accepting bribes in order to procure a certificate of Croatian citizenship for H.Ć. In his testimony as a witness during the investigation the latter stated that the applicant had helped him to obtain such a certificate, but had not accepted any money. Therefore, the criminal investigation against the applicant had been discontinued.

65. However, the authorities conducting the disciplinary proceedings had not been bound by the findings or the result of the criminal proceedings. They had conducted their own assessment, on the basis of the evidence available to them, of the applicant's conduct in his capacity as a police officer. The decisions of the disciplinary authorities were based, *inter alia*,

on the applicant's confession. Although at the hearing held in these proceedings the applicant retracted his previous confession he had not presented any other evidence in that respect.

66. The finding of the first-instance disciplinary court that the applicant had committed a criminal offence had been remedied by the appellate court which found that the applicant had committed an offence under Section 82 paragraph 1 (13 and 17), thus finding in the applicant's conduct elements of grave breaches of work discipline, irrespective and independent of any criminal offence.

(b) The Court's assessment

67. The Court's case-law establishes that the presumption of innocence is infringed if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty, unless he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards that person as guilty (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X, and *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the statement was made (see *Daktaras*, cited above, § 43). The scope of Article 6 § 2 is moreover not limited to pending criminal proceedings, but extends to judicial decisions taken after a prosecution has been discontinued (see *Nölkenbockhoff*, cited above, § 37; and *Capeau*, cited above, § 25) or after an acquittal (see, in particular, *Sekanina v. Austria*, cited above, § 30; *O. v. Norway*, no. 29327/98, ECHR 2003-II and *Grabchuk v. Ukraine*, no. 8599/02, § 42, 21 September 2006).

68. As to the present case, the Court notes that the Constitutional Court in dismissing the applicant's complaint relied, *inter alia*, on a different standard of proof required in disciplinary proceedings from that required for a conviction of a criminal offence. The Court reiterates that it has accepted the justifiability of similar reasoning in the context of civil tort liability. In respect of the latter the Court has held that (*Y v. Norway*, cited above):

> "41. In the view of the Court, the fact that an act which may give rise to a civil compensation claim under the law of tort is also covered by the objective constitutive elements of a criminal offence could not, notwithstanding its gravity, provide a sufficient ground for regarding the person allegedly responsible for the act in the context of a tort case as being "charged with a criminal offence". Nor could the fact that evidence from the criminal trial is used to determine civil law consequences of the act warrant such characterisation. Otherwise, as rightly pointed out by the Government, Article 6 § 2 would give a criminal acquittal the undesirable effect of pre-empting the victim's possibilities of claiming compensation under the civil law of tort, entailing an arbitrary and disproportionate limitation on his or her right of access to court under Article 6 § 1 of the Convention. This again could give an acquitted perpetrator, who would be deemed responsible according the civil burden of proof, the undue advantage of avoiding any responsibility for his or her actions. Such an extensive interpretation would not be supported either by the wording of Article 6 § 2 or any common ground in the national legal systems within the Convention

community. On the contrary, in a significant number of Contracting States, an acquittal does not preclude establishing civil liability in relation to the same facts.

Thus, the Court considers that, while the acquittal from criminal liability ought to be maintained in the compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof (see, *mutatis mutandis*, *X v. Austria*, no. 9295/81, Commission decision of 6 October 1992, Decisions and Reports (D.R.) 30, p. 227; *M.C. v. the United Kingdom*, no. 11882/85, decision of 7 October 1987, D.R. 54, p. 162).

42. However, if the national decision on compensation contains a statement imputing the criminal liability of the respondent party, this could raise an issue falling within the ambit of Article 6 § 2 of the Convention.

43. The Court will therefore examine the question whether the domestic courts acted in such a way or used such language in their reasoning as to create a clear link between the criminal case and the ensuing compensation proceedings as to justify extending the scope of the application of Article 6 § 2 to the latter."

69. The Court firstly notes that in the disciplinary proceedings the applicant was not found guilty of a criminal offence but of a disciplinary one. Although the first–instance disciplinary decision stated that the applicant had committed a criminal offence, this was rectified by the appellate disciplinary body, which expressly stated that the act in question had constituted a disciplinary offence of inappropriate conduct. It further asserted that no one could be considered liable for a criminal offence as long as his or her liability had not been established in a final judgment.

70. As to the factual basis of the disciplinary offence against the applicant, the Court notes that the disciplinary bodies found that the applicant had acted as an intermediary in procuring illegally a certificate of Croatian citizenship for a third person and had passed on a sum of money for that purpose. These findings sufficed to establish the applicant's disciplinary responsibility. The Court considers that the disciplinary bodies were empowered to and capable of establishing independently the facts of the case before them. In doing so the Court does not consider that such language was used – other than what was rectified by the appeal court – so as to call in question the applicant's right to be presumed innocent.

71. In this connection the Court points out that one of the crucial elements of the criminal offence in respect of which an investigation in respect of the applicant was opened and later on discontinued was that the applicant himself had taken the money (see paragraphs 14 and 15 above). This aspect was, however, not decisive for the disciplinary offence in question. Thus, the constitutive elements of the disciplinary and the criminal offences in question were not identical.

72. In view of this, the Court considers that the decision on the applicant's dismissal did not run contrary to the right guaranteed under Article 6 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. The applicant further complained that he had at his disposal no effective remedy in respect of his Article 6 complaints. He relied on Article 13 of the Convention which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

74. The Court notes at the outset that the applicant's complaint under Article 13 of the Convention is linked to his complaints under Article 6 of the Convention, which are twofold (see paragraph 23 above). The Court will proceed by examining these two aspects of the alleged violation of Article 13 separately.

75. As regards the applicant's complaints concerning the fairness of the disciplinary proceedings against him, the Court notes that the applicant was able to lodge an appeal against the first-instance decision, an administrative complaint as well as a constitutional complaint.

76. As regards the applicant's complaint concerning the violation of his right to be presumed innocent, the Court notes that the applicant was able to lodge a constitutional complaint.

77. In connection with both aspects of Article 13, the Court reiterates that this provision does not guarantee success of a remedy used.

78. Having regard to the above, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 104,256.56 euros (EUR) in respect of pecuniary damage and EUR 19,315.53 in respect of non-pecuniary damage.

81. The Government deemed the sum claimed unfounded and excessive.

82. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violation found which cannot be made good by the Court's mere finding of a violation. Nevertheless, the particular amount claimed is excessive. Making its assessment on an equitable basis,

as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

83. The applicant also claimed EUR 1,835 for costs and expenses incurred before the Court.

84. The Government left it to the Court to assess the necessity of the costs incurred.

85. Under the Court's case-law, an applicant is entitled to reimbursement of his 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 information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum claimed plus any tax that may be chargeable to the applicant.

C. Default interest

86. The Court considers it appropriate that the default interest 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 complaints concerning the applicant's right to a fair trial and to be presumed innocent 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* that there has been no violation of Article 6 § 2 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 1,800 (thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;

(ii) EUR 1,835 (one thousand eight hundred thirty-five euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(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;

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

Done in English, and notified in writing on 14 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President