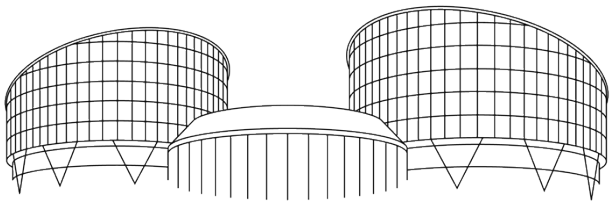

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AJDARIĆ v. CROATIA

(Application no. 20883/09)

JUDGMENT

STRASBOURG

13 December 2011

FINAL

04/06/2012

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

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

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

Anatoly Kovler, *President,*
Nina Vajić,
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 20883/09) 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 national of Bosnia and Herzegovina, Mr Neđo Ajdarić ("the applicant"), on 13 March 2009.

2. The applicant was represented by Mr Lansky and Mr Ganzger, lawyers practising in Vienna. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 10 November 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). On the same date, the Government of Bosnia-Herzegovina were informed of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 (b). They chose not to avail themselves of this right.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Lepoglava.

1. Background to the case

5. In October 1998 three persons, R.S., G.C. and I.Š., were killed in their house in Kutina, Croatia, and a sum of at least 960,000 Croatian kuna (HRK) was taken from the house.

6. In April 1999 one M.G. was indicted before the Sisak County Court (*Županijski sud u Sisku*) on three counts of the above-mentioned murder. He was initially acquitted, but on 1 June 2005 the Supreme Court (*Vrhovni sud Republike Hrvatske*) ordered a retrial.

7. On an unspecified date in 2005 the applicant was arrested on suspicion of having committed a car theft in Croatia and placed in detention in Remetinec Prison in Zagreb (*Zatvor u Remetincu*).

8. On 29 December 2005 he fell ill and was transferred to Zagreb Prison Hospital. He shared room no. 206 with seven other inmates, including M.G. and S.Š. The latter was a former policeman. He had already been sentenced to seven years' imprisonment for attempted murder but his conviction had not yet become final. On an unspecified date S.Š. wrote to the Bjelovar Police Department, informing it that he had knowledge of the circumstances concerning a murder of three persons committed in Kutina.

9. On 3 March 2006 S.Š. gave his evidence before an investigating judge of the Bjelovar County Court (*Županijski sud u Bjelovaru*). He said that he had overheard conversations between the applicant and M.G. in which they had discussed the murder of three persons of which M.G. had been accused and which had revealed that the applicant had been an accomplice in these crimes. The relevant part of the written record of his statement reads:

> "Owing to health problems I was placed in Zagreb Prison Hospital between 23 November 2005 and 13 January 2006. ... The day after I had been admitted to the Hospital, M.G. arrived and was placed in the same room. His bed was next to mine. ...
>
> About five to six days after that Nedjeljko Ajdarić was placed in the same room. ... His bed was next to the one occupied by M.G. so that M.G. was between the two of us. When Nedjeljko Ajdarić came into the room he exchanged greetings with M.G. and their conversation gave me the impression that they had known each other for years. ...
>
> M.G. and Nedjeljko Ajdarić had secret conversations for days. They sat on their beds and talked and since my bed was next to theirs, although they were talking in lowered voices, I could hear what they were saying. I heard Nedjeljko Ajdarić saying that he had prospered from that money and that his business was going well, and I heard M.G. saying: 'We did it all well, only I made a mistake by placing the money into a container', but he did not explain what container. They also mentioned that about 960,000 Croatian kuna (HRK) had been found in the house, some in foreign currency, and some in HRK. I heard Nedjeljko Ajdarić saying that he had been afraid to go to the border crossing between Stara Gradiška and Bosanska Gradiška and that in the end he had crossed [the State border] in Davor, and he also mentioned that he had been accompanied by a woman, but I could not understand whether it had been his wife or the wife of M.G.

I also heard Nedjeljko Ajdarić telling M.G. that he had had to walk around in Bosnia for a whole day, in Banja Luka, in order to send a signal from a mobile telephone to Bjelovar, [which would show] that M.G. had been in Bosnia.. Nedjeljko Ajdarić also mentioned that he had gone to a hill known as 'Veseli Brijeg' in order to send the signal, but he had not succeeded [...] and in the end had sent a signal from the 'Motajica' mountain. When they talked about sending that signal from a mobile telephone, I heard M.G. telling Nedjeljko Ajdarić that if anything happened, Nedjeljko would testify that he had been in Bosnia and from their conversation I concluded that Nedjeljko Ajdarić had gone to Bosnia with the mobile telephone of M.G. and that he, by making some telephone calls, had created an alibi for M.G., [in other words], that he had been in Bosnia.

When I listened to these secret conversations between [M.]G. and Ajdarić I also heard them mentioning how they had been surprised to find three people in the house and that they had not expected a third person, and that therefore they had waited for a long time in front of the house for someone to come out and take the children away. They also mentioned that they had seen a woman taking the children out of the house, but I did not hear whether they referred to one child only or to more than one.

I also heard [M.]G. telling Ajdarić that his wife worked with the military as a dentist or dental technician, I did not understand this very well, and that after the event at issue she had said something in town and that that had contributed most to his discovery and detention.

From the above-mentioned secret conversations between [M.]G. and Ajdarić, in the course of which they mentioned that they had been surprised to find a third person in the house, I concluded that a financial transaction had taken place in that house and that a third person was involved.

From their conversations I also concluded that M.[G.] had grown up with the owner of the house, who had had a money exchange office and who had been killed, and I concluded that they had had conflicts.

I remember that Ajdarić told [M.]G. that he had not dared to cross the border between Stara Gradiška and Bosanska Gradiška because of increased security and that therefore he had crossed at Davor by boat or ferry. I also remember that they mentioned that in a container in [M.]G.'s [house] the sum of HRK 460,000 had been found, while the rest of the money had ended up with Ajdarić. Nedjeljko Ajdarić also told [M.]G. that he had spent his part of the money on opening his car-dealing business in Banja Luka. I also heard Nedjeljko Ajdarić telling [M.]G. that his company had sold stolen cars and had been involved in life insurance and car insurance and that the wife of Nedjeljko Ajdarić was also employed there and that there were other employees. I also heard Ajdarić telling [M.]G. that it was possible to obtain a car through his company, with all the documents, without going to the police.

I asked Ajdarić about 'Veseli Brijeg' because I wanted to know something about it and he told me that Roma lived in that area and that was the reason why it was known as 'Veseli Brijeg'. I do not know where that place is and I have never been there.

I also heard Ajdarić saying that he was afraid of being found out since he had only four months to serve and then M.G. answered that there was nothing to worry about because one witness, a woman who was the key prosecution witness, had changed her testimony and had given a completely different statement than before."

10. On 4 April 2006 S.Š. gave his evidence at a hearing held before the Sisak County Court in the criminal proceedings against M.G. The relevant part of his statement reads:

> "I am currently detained in Bjelovar Prison because I have been sentenced to seven years' imprisonment by the Bjelovar County Court on charges of attempted murder and causing a risk to life and assets through dangerous activity, which conviction has not yet become final. Owing to health problems I was sent to Zagreb Prison Hospital where I was placed in room no. 206 between the end of November 2005 and 13 January 2006.
>
> I saw the accused for the first time in Zagreb Prison Hospital when he was transferred to the same room. Before that he had been in the surgical ward and was transferred to a non-smoking room. I do not recall the exact date when he was transferred to my room, but I remember that it was sometime in December 2005, and as a result we spent a lot of time in the same room. Immediately upon his arrival we started to get to know each other and to talk and I told him right away for which criminal offence I was detained, but at the beginning he did not want to tell me what he was accused of. In our discussions we had an argument about a defence lawyer in the present case, since the same counsel was defending us both, and I did not like the fact that the accused had criticised her.
>
> Sometime in mid December 2005, I do not remember the exact date, Nedjeljko Ajdarić was also transferred to the same room from Remetinec Prison. I immediately noticed that the accused and Nedjeljko Ajdarić greeted each other as if they had known each other for a long time. The bed occupied by Nedjeljko Ajdarić was in the middle, that is to say, between the one that I occupied and the one occupied by the accused. There were six inmates in the room, and they often changed.
>
> Since the bed occupied by the accused was next to the one occupied by Nedjeljko Ajdarić and the distance between the beds was twenty to thirty centimetres, they often talked to each other. They firstly talked about the occupation of Nedjeljko Ajdarić in Banja Luka. I mostly heard these conversations when lying on my bed reading the newspapers and doing crossword puzzles. I remember clearly that the accused and Nedjeljko Ajdarić started to discuss the criminal offence Ajdarić was accused of and I remember that Ajdarić had bought a car somewhere near Karlovac, which had been stolen, and Ajdarić and his wife and another person had been arrested on that account. Ajdarić had stayed in detention while his wife had been released. Ajdarić said that he had been sentenced to one year's imprisonment and that he had had four more months to serve, after which he would be released and I remember that he had expressed some fear, and that the accused had comforted him. Also, Ajdarić said that he had been dealing in smuggled cars, licence plates and car insurance documents and that he had bought a machine in Germany for identifying the codes of expensive cars.
>
> From their conversations I heard that the accused had family in Banja Luka and that they knew each other from Banja Luka. I also remember that Ajdarić said that the man from whom he had bought the car had died. He said that it was lucky that he had died because otherwise it would have been discovered how he had committed a criminal offence. Another inmate, J.M., reacted to that story since he knew the man who had died.
>
> After that the two of them started to talk about the mobile telephone. Ajdarić said that he had gone to Kutina with S. – I do not know that person – and that they had

waited for a long time for a woman to return to the house, a woman who had left the house with one child or more children – I did not understand this very well. I also heard them saying that they had no knowledge about the third person in that house. I remember that they said that they had waited to enter the house, and that the wife of the accused had also been there and that it [sic] concerned a money exchange office where a childhood friend of the accused had worked. From what Ajdarić was saying, I understood that he was worried and I remember the accused telling him that a woman, who was the key prosecution witness in the proceedings, had changed her statement in their favour. They also discussed the money and I remember Ajdarić saying that he would pay for the defence of the accused and they also mentioned that the first lawyer who had defended the accused in these proceedings had later on engaged the services of lawyer B.J.

After I left the [Zagreb Prison] Hospital, I contacted the Bjelovar Police and they asked if I wished to be a witness in the proceedings against the accused and I told them that I firstly wished to consult lawyer B.J, who was both my defence counsel and the defence counsel of the accused. I consulted her and she came to visit me to prison and asked me if I knew anything about the event at issue. I told her that the accused had said that he had been found out as a result of what his wife had been telling [other people] in the town and the lawyer asked me for whom I was working. I told her that I did not work for anyone and that I had decided to testify because of the children who had been left behind. The lawyer told me to be careful what I was saying and that I might be 'swallowed by the dark'. She said that when I mentioned the name S.

I would also like to add that I heard the accused and Ajdarić saying that later on it had been a problem for them to reach Banja Luka and that Ajdarić and the wife of the accused had crossed the state border at Davor because the wife of the accused had to return the mobile telephone of the accused back to Croatia, while S. crossed the state border in Stara Gradiška. Ajdarić and the wife of the accused had taken the money and two mobile telephones, while the accused had returned to Bjelovar. They took mobile telephones to Bosnia and Herzegovina because they wanted to send signals to Bjelovar. They mentioned that they had [tried to] send a signal from the Motajica mountain, where the signal had been low, so they had gone to the area known as 'Veseli Brijeg' near Banja Luka and sent a signal from there.

I also remember that they said that the money had been found in a container, but I do not know if they meant a deep freezer or something else. So, the money had been found in that container, about HRK 450,000.

I would also like to mention a further detail which I noticed while in the prison hospital. It was a Sunday, visiting time and both the accused and Ajdarić had visitors. Ajdarić returned about ten minutes before the accused. The door of the room was open and I saw Ajdarić waving to someone from the open window in the hall. I approached the window to see who he was waving at and I also asked him about it and he said that he was waving at his wife. I saw the car in which his wife had arrived, it was a Golf, and I asked him how come his wife was driving such a car, since he had been bragging that he dealt in expensive cars, and he told me that the car belonged to someone in Croatia who had driven his wife there for the visit and that that man was carrying money to finance the accused's defence. I asked him if that person was S. and he told me that it was not my business.

I have nothing else to add.

To a question by the Deputy State Attorney the witness answered that from the conversations between the accused and Nedjeljko Ajdarić he had understood that with his part of the [stolen] money Ajdarić had opened a 'business' in Banja Luka with five to six employees and that that 'business' was run by his wife and that that was his second wife; he had divorced the first one.

To a further question by the Deputy State Attorney the witness answered that he had heard the accused saying that his wife was a doctor in dentistry, employed with the military in Bjelovar.

To a specific question the witness answered that from their conversations he had heard that 'Veseli Brijeg' was a Roma settlement near Banja Luka and that the river Vrbas ran nearby.

To a further question by the Deputy State Attorney the witness answered that he had got the impression that the accused and Nedjeljko Ajdarić had known each other from before. The accused had been in detention in Sisak and Ajdarić in Zagreb. As regards the worries of Ajdarić, they concerned his fear that he would be found out as a perpetrator of the criminal offence at issue during his detention.

To a further question by the Deputy State Attorney the witness answers that the sending of a signal from a mobile telephone from Bosnia and Herzegovina had been aimed at showing that at that time the accused had been in Bosnia and Herzegovina.

To a further question by the Deputy State Attorney the witness answered that he had heard that the accused had taken his part of the money to his home and that as a result of what his wife had been telling [people] in Bjelovar, the house had been searched and the police had found the money in a 'container'.

To a further question by the defence lawyer the witness answered that J.M. and V.B. had been in the same room [in Zagreb Prison Hospital] at the same time, as well as a prisoner, R., from Gospić Prison who had been transferred from Lepoglava, but that the latter stayed for a shorter time.

To a further question by the defence lawyer the witness answered that the inmates had often changed beds, sometimes even several times a day. He further stated that the first bed next to the wall had been occupied by M., the bed occupied by him [the witness] had been next to his and that after that he had not changed beds. The bed next to his had been occupied by Ajdarić, which had been next to the one occupied by the accused.

To a further question by the defence lawyer as to whether the other inmates heard the conversation between the accused and Ajdarić, the witness answered that he did not know, but that he had listened to them because he had been interested. He further stated that sometimes he remembered whole conversations between them, and sometimes only parts.

To a further question by the defence lawyer the witness answered that the said conversations between the accused and Ajdarić had mostly taken place in the afternoons, when the inmates had been allowed to watch television in a common room, when the accused and Ajdarić had stayed in the bedroom by themselves and talked. He would only watch the news and then return [to the room] because he had been interested in what the two had been talking about.

To a further question by the defence lawyer as to who made the first contact with the police the witness asked whether he had to answer that question and when told that he had to, stated that he had contacted the police through the Bjelovar Prison Administration as soon as he had returned from Zagreb Prison Hospital [to Bjelovar Prison]. He had contacted the police twice, the first time [he had spoken] to a police officer and the second time to someone from the investigation in Sisak, he did not know who.

To a further question by the defence lawyer the witness answered that he had got the impression that the accused and Ajdarić had known each other for a long time from the manner of their greeting because they had shaken hands, while the other inmates had not shaken hands and it had taken them longer to get to know each other.

When asked by the defence lawyer to repeat exactly what the accused and Ajdarić had said when they talked about the mobile telephone, the witness answered that he could not repeat their exact words, but that he had told [the court] what he had concluded from their conversation.

To a further question by the defence lawyer the witness answered that when Nedjeljko Ajdarić had arrived in their room and greeted the accused, J.M. had also been present.

To a further question by the defence lawyer the witness answered that J.M. had also been present when the accused and Ajdarić had spoken about the criminal offence committed by Ajdarić and when they had spoken about the criminal offence committed in Kutina, no one else had been present – just him, the witness, who had returned from the TV room where he had been watching the news.

To a further question by the defence lawyer the witness answered that he had not been offered anything by anyone in connection with the criminal offence for which he had been convicted, but which conviction had not yet become final.

He stated that lawyer B.J. had refused to continue representing him without any explanation.

To a further question by the defence lawyer the witness answered that he had never been treated in a psychiatric ward and that in the proceedings against him a psychiatric examination had been carried out. After he had given his statement in the Bjelovar County Court, he had had no further contact with the police.

To a question by the Deputy State Attorney the witness answered that he had heard the doctor who treated the accused say that his treatment would be long and would continue for at least six months, after which the accused had said that he suspected that he had been poisoned.

There were no further questions.

...

The accused objected to the statement by the witness in its entirety and explained that he himself had spoken with the witness about the particulars of the criminal proceedings against him.

...”

2. The applicant’s trial

11. On 26 April 2006 the applicant was indicted in the Sisak County Court on three counts of murder committed together with M.G. in Kutina, Croatia, on 8 and 9 October 1998. The proceedings against the applicant were joined to those already pending against M.G.

12. At the hearing held on 26 June 2006 S.Š. gave his evidence. The relevant part of the written record of the hearing reads:

> “The witness gave the same evidence as noted in the written record [of the hearing held on] 4 April 2006 and had nothing to add.
>
> To a question by the Deputy State Attorney the witness answered that from the conversations between the first and the second accused he had not understood how many mobile telephones they had used during the event in question, but he had heard that the signals had been sent from the area known as ‘Veseli Brijeg’ in Kutina.
>
> To a further question by the Deputy State Attorney the witness answered that the purpose of sending the signals from mobile telephones had been to make others think that they were all in Bosnia at that time. He also stated that the first and the second accused had mostly spent time together in the evening, after dinner. He himself had also talked to Ajdarić and asked him how he had managed to do so well in Bosnia and Herzegovina and open his enterprise immediately after the war, to which the second accused had answered that he was a smart person.
>
> To a further question by the Deputy State Attorney the witness answered that he had heard them mention a place called Hrvaćani, but he did not know whether that was a village, a settlement or a mountain, where they had stopped to have a coffee. As a signal could not be sent from that place to Croatia, they had continued to the place known as ‘Veseli Brijeg’ and sent a signal to Croatia from there.
>
> To a further question by the Deputy State Attorney the witness answered that during the time he was detained in Bjelovar Prison in connection with the criminal proceedings against him on charges of attempted murder, his defence lawyer had been B.J. During one visit she had asked him about his stay at Zagreb Prison Hospital at the same time as the first accused. He had told her about what he had heard from the conversations between the first and the second accused, but a much shorter version, after which she had told him to be careful ‘not to be swallowed by the dark’, and then refused to continue to represent him in the criminal proceedings against him.
>
> To a further question by the Deputy State Attorney the witness answered that he had heard from the first accused what his wife’s profession was and that she worked with the military and that she had said certain things in Bjelovar owing to which the location of the money had been discovered. The first accused had told him that his wife was a doctor in dentistry, but later on it had turned out that she was a dentist’s assistant.
>
> To a further question by the Deputy State Attorney the witness answered that he was not giving evidence to hurt anyone, but rather because he had heard that the second accused participated in the criminal offence at issue and he was a foreigner, that is to

say, a person from another country, and because by committing the criminal offence at issue he had become rich and ensured his existence by causing damage to others. Also, the second accused had said that it was good that the person from whom they had stolen the car had died, because otherwise their role in the criminal offence would have been discovered as well.

To a further question by the Deputy State Attorney the witness answered that he had children of his own and was motivated to give evidence by the fact that the deceased had had children, and that now he understood their position, and that of his own children, because of the criminal offences he had himself committed.

To a question by the defence lawyer of the first accused the witness answered that he had made notes about what he heard from the conversations between the first and the second accused and showed these notes to the court.

The notes made by the witness are enclosed in the case file.

The witness stated that these notes were a word play, that is to say, he had mixed up letters in the words.

To a further question by the defence lawyer of the second accused the witness answered that he had been the first to arrive in room no 206 in Zagreb Prison Hospital, sometime in late or mid November 2005, where he had stayed until 13 January 2006. The first accused had arrived after him and ten days later the second accused had arrived. The bed occupied by the second accused had been in the middle, between the bed occupied by the first accused and the one occupied by him. The bed next to the one occupied by the first accused had been occupied by an older person from Dubrava who was shortly transferred to another room and the second accused would lie on that bed. The first accused had mostly socialised with the second accused. Once the witness had had an argument with the second accused concerning a lieutenant of the Yugoslav People's Army ...

To a further question by the defence lawyer of the second accused, the witness answered that the second accused had told him that he had been dealing in used cars, car insurance and life insurance and that that business was run by his wife, while he had often travelled with the boys in order to purchase cars. The second accused had also told him that he had a machine for deciphering codes, which he had bought in Munich. The witness had never had a conflict with the first accused.

To a further question by the defence lawyer of the second accused, the witness answered that he had spoken to lawyer B.J. who had for a short time been the defence lawyer of both himself and the first accused, and that the first accused had told him that she was a good lawyer and had been representing him well and had managed to win over his first defence lawyer. ...

To a further question by the defence lawyer of the second accused the witness answered that he did not know whether other inmates who shared the same room had heard what the first and the second accused were talking about, but he was sure that some of them did not care about these conversations. J.M. had avoided all contact with the first and the second accused.

...

To a further question by the defence lawyer of the second accused the witness answered that he had concluded that the second accused was insecure and unstable and for that reason often spoke to the first accused. He had had the impression that the second accused was worried, and tried to relieve his worries by talking to the first accused during the last four months of his sentence.

To a further question by the defence lawyer of the second accused the witness answered that he had an eighteen-year old son with whom he had no contact because the latter had been brought up by his mother and grandmother.

To a further question by the defence lawyer of the first accused the witness answered that there had been six beds in that room and that later on one more bed had been brought in.

There were no further questions.

The second accused objected to the evidence given by the witness, stating that it was entirely fabricated.

..."

13. Both the applicant and M.G. denied that they had ever met before the applicant's arrival at Zagreb Prison Hospital in December 2005. M.G. said that during the first few days of their stay in the same room in Zagreb Prison Hospital he and the applicant had had no contact at all and later on had talked about general topics. They had never talked about the criminal offence he had been accused of. When he had heard that he and S.Š. were being represented by the same lawyer, he had told S.Š. what he was accused of. The applicant claimed that in 1998 he had not been to Croatia at all, but had been living in Bosnia and Herzegovina, and that he had never been to Kutina in his life. He said that during their stay at Zagreb Prison Hospital S.Š. had mostly spoken to M.G. and had often complained to him.

14. At a hearing held on 18 September 2006 J.M. gave his evidence. The relevant part of the written record reads:

"I met the first and the second accused in Zagreb Prison Hospital in December 2005. I remember that I was in room no. 206 together with the accused, S.Š. and two other inmates, V. and P. I was the first one to arrive and then S.Š., after him the first accused and then the second accused. We all talked together and discussed everything. I did not get the impression that the first and the second accused knew each other from before, although they socialised with each other mostly. I also spoke with the second accused who told me that he had been imprisoned because of a vehicle. I also spoke with the first accused and asked him why he was in prison; he only told me that it was a long story and that it was the second time he had been detained.

...

To a question by the Deputy State Attorney the witness answered that he had not heard the first and the second accused talking about committing a criminal offence together.

To a further question by the Deputy State Attorney the witness answered that he had regularly watched television and noticed that the first accused had mostly stayed in the room because he could not stand the cigarette smoke [in the television room] so he would sometimes watch the sports programme only. He had also noticed that the second accused had not watched television often. S.Š. had sometimes watched television but would soon return to the room.

To a further question where the bed occupied by S.Š. had been placed the witness answered that along one side of the room there had been four beds; the first one had been occupied by him, then there had been two bedside cupboards, then the bed occupied by S.Š., then a bedside cupboard, then the bed occupied by B., then another bedside cupboard, then the bed occupied by the first accused. The bed occupied by the second accused had been placed perpendicular to the other beds.

To a further question by the Deputy State Attorney the witness answered that the first and the second accused and S.Š. had had normal contact, they had talked and he had also had normal contact with them and he had never heard of or discussed with S.Š. anything that the first and the second accused allegedly talked about.

To a question by the defence lawyer of the first accused the witness answered that when the first and the second accused had talked they had talked in normal voices and had never whispered or talked in lowered voices.

To a further question by the defence lawyer of the second accused the witness answered that he had spent just over two weeks in room no. 206 together with the second and the first accused and the others.

...

To a further question by the defence lawyer of the second accused the witness answered that the second accused had arrived in the room about a week or ten days after the first accused.

To a further question by the defence lawyer of the second accused the witness answered that, as regards watching television, the first accused had behaved in the same way before and after the arrival of the second accused, namely, he could not stand the cigarette smoke [in the television room] so he had avoided watching television.

...

To a question by the first accused the witness answered that the first accused had spent most of the time in bed, doing crossword puzzles or reading.

To a further question by the first accused the witness answered that upon the arrival of the second accused in the said room for the first two or three days there had been no communication between the first and the second accused, or others, and only after several days had they all started to communicate with each other and to have conversations.

..."

15. At the same hearing N.P. gave evidence. The relevant part of the written record reads:

> "I spent twelve days in the Zagreb Prison Hospital ... at the same time as the first and the second accused ... When I arrived in that room the first and the second accused and S.Š. were already there. ... I mostly smoked together with S.Š. ... I did not discuss any criminal offence with S.Š.. He only told me that he was hoping to return to Bjelovar and that he would be acquitted.
>
> Since I arrived in that room when the others were already there, I do remember that the first and the second accused socialised and ordered fruit in the canteen together. From my conversations with the second accused I remember that he had some problems at the state border and as for the first accused, I can say that he gave the impression of being a policeman from the former system and was very reticent. [I had the impression] that he lived in his own world.
>
> ...
>
> To a question by the Deputy State Attorney as to whether they had discussed why each of them had been in prison, the witness answered that he had told the others why he had been in prison ... but did not remember whether the others had disclosed the reason for their imprisonment, because the prison rule was not to ask such questions ...
>
> To a further question the witness answered that he had not heard any conversation between the first and the second accused, save for the usual discussions about food and similar. The first accused had talked more to the others in the room than to the second accused.
>
> To a question by the defence lawyer of the first accused the witness answered that he had not noticed that the first and the second accused would separate themselves from the others, although they had been allowed to leave the room and take walks ...
>
> To a question by the defence lawyer of the second accused the witness answered that [the beds occupied by] the first and the second accused had been next to his and [the bed occupied by] S.Š. had been on the other side.
>
> ..."

16. During the proceedings the applicant objected to the evidence given by S.Š., arguing that he had mostly spoken of his own conclusions, which could not be taken as evidence, and had been unable to repeat anything he and M.G. had allegedly talked about. The applicant also relied on a psychiatric report drawn up in respect of S.Š. for the purposes of the criminal proceedings against him. The relevant part of the report drawn up on 20 October 2004 reads:

> "The intellectual level of the patient is within the regular limits. His personality has emotionally unstable and histrionic characteristics.
>
> ...

A more advanced assessment shows characteristics from category F60.8 (lack of restraint, immaturity, aggression); F60.4 (more traits typical of a histrionic personality – affective shallowness, instability, egocentrism, lack of concern for others, confirmation-seeking, inability to cope with loss, [tendency to] defend ego even when it causes moral damage). ...

Emotionally unstable personality (F60.3 according to MKB-10) is characterised by a tendency towards impulsive behaviour without concern for consequences, and unpredictable and volatile moods. ...

Histrionic personality disorder (F60.4) is characterised by shallow and unstable affection, self dramatisation, affected expression, exaggerated expression of feelings, suggestibility, egocentrism, self-indulgence, lack of concern for others, easily hurt feelings and constant seeking of approval, excitement and attention from others.

Obligatory psychiatric treatment is recommended ...

..."

17. On 22 September 2006 the Sisak County Court found both M.G. and the applicant guilty of three counts of murder motivated by personal gain and sentenced each of them to forty years' imprisonment. The judgment also held that they had taken no less than 960,000 Croatian kuna from the house of the victims. The applicant was convicted solely on the basis of the evidence given by S.Š. The relevant part of the judgment reads:

"The first accused M.G. ...

and

The second accused Neđo Ajdarić ...

are guilty

in that they:

1. on the night of 8 to 9 October 1998, in accordance with their previous agreement with an unknown woman, after arriving in a Peugeot 406, licence plates BJ 406 BF, at no. 23 A.G. Matoš Street in Kutina, residence of R.S., I.Š. and G.C., and having parked the car near the house, in the knowledge that I.Š., R.S. and G.C. kept a large amount of money in the house, left the car in order to kill them and appropriate their money, while the unknown woman hid close by the car and kept guard so that nobody would find them. They entered the house in which late I.Š., R.S. and G.C. lived, through the door in an unidentified manner, approached G.C. who was asleep in his bed and from a 7.65 mm calibre Scorpion gun shot two bullets into the head of G.C. from a distance of about eighty centimetres and thus caused him two gun-shot wounds to the head ... from which he died instantly, and then took and kept an unidentified amount of money, but no less than 960,000 Croatian kuna, and distributed it between them;

...

2. immediately after the offence under point 1., at the same place and in the same manner, after they had entered the house, shot two bullets at R.S. who was asleep, from the 7. 65 mm calibre Scorpion gun from a distance of eighty centimetres, thus causing him two gun-shot wounds to the head, ... from which R.S. died instantly, and then took from the house and kept for themselves an unidentified amount of money, but no less than 960,000 Croatian kuna, which they distributed between them;

...

3. immediately after the offence described under point 1. and in the same place and at the same time from the said 7.65 mm calibre Scorpion gun, shot two bullets into the head of I.Š., who was asleep, from a distance of eighty centimetres, thus causing her two gun-shot wounds to the head ...from which I.Š. died instantly, and then took an unidentified amount of money, but no less than 960,000 Croatian kuna, which they distributed between them;

...

R e a s o n i n g

...

Witness S.Š. said that he had been placed in detention in Bjelovar Prison because he had been sentenced to a seven-year prison term. His conviction was not final. Owing to his health problems he had been transferred to Zagreb Prison Hospital. He had stayed there in room no. 206 from the end of November 2005 until 13 January 2006. He had met the first accused for the first time in the prison hospital. They had spent time together and he had immediately told the first accused why he had been detained, but the first accused had at first not wished to disclose the reason for his own detention. They had had an argument about the defence counsel of the first accused. He [S.Š] had been displeased by certain comments that the first accused had made about her.

In mid-December of 2005 the second accused [the applicant] had been placed in the same room [having been transferred] from Remetinec Prison. [S.Š.] had noticed that the first and the second accused had greeted each other as if they already knew each other. The second accused's bed had been placed between his and that of the first accused. The first and the second accused had talked a lot between themselves ... He had overheard their conversations while lying on his bed and reading the newspapers. ...

... he learned from these conversations that the two of them knew each other from Banja Luka. ... The first and the second accused had also talked about a mobile telephone and the second accused had said that he had come to Kutina with a certain S. and that they had waited there for a long time for a woman to return to the house. They had said that they had not known that a third person had been present in the house.

From these stories he had understood that, apart from the three of them, the first accused's wife had also been implicated, and that it [sic] had concerned an exchange office in which a childhood friend of the first accused had worked. The second accused had feared being discovered and the first accused had told him that one

woman, a witness, had changed her statement in their favour. The second accused had told the first accused that he would pay for his defence ...

He had also learned from their conversations that the second accused and the first accused's wife had crossed the border to Bosnia and Herzegovina at Davor, because the first accused's wife had had to take the mobile telephone belonging to the first accused back to Croatia, while S. had crossed to Bosnia and Herzegovina at Stara Gradiška. The money had been carried by the second accused and the first accused's wife as well as the two mobile telephones, while the first accused had returned to Bjelovar. They had taken the mobile telephones to Bosnia and Herzegovina because it had been necessary to send signals to Bjelovar: the signals had been sent from the Motajica mountain and from Veseli Brijeg.

The first and the second accused had also discussed the money which had been found in the first accused's deep freezer, about 450,000 HRK, which was the first accused's share. These conversations had mostly taken place in the afternoons or evenings when the inmates were allowed to watch television – the first and the second accused would stay in the room alone and talk. He [S.Š] would come back to the room instead of watching television and that is when he would overhear the conversations.

...

The evidence of witness S.Š., who described in detail, convincingly and logically what he had overheard from the conversations between the first and the second accused shows that the first and the second accused had committed the criminal offence at issue. Witness S.Š. mentions a number of details about the events at issue about which the first and the second accused had talked, such as waiting for a woman (K.P.) to return to the house, calls from mobile telephones from Bosnia and Herzegovina, keeping the money in a deep freezer in the first accused's garage, and surprise at the presence of a third person in the house where the crime had been committed (accidental presence in the house of I.Š., who was on maternity leave at the time and spent most of the time at her parent's house in Velika Gorica). Witness S.Š. gave his evidence on three occasions; his statements were all identical in their essential part and could not have been invented, because he described small details relating to both the time before as well as after the events which correspond to the established facts.

Neither has this court found any reason why witness S.Š. would testify against the first and the second accused, whom he did not know from before and had met for the first time in Zagreb Prison Hospital. It has not been established that he benefited in any manner [from giving his evidence]. The psychiatric report on S.Š. does not show that he suffers from a mental illness. [It shows that] his intellectual level is normal and therefore the veracity of his evidence has not been called into question in any manner. The accountability of witness S.Š. as an accused in other criminal proceedings was diminished, but not to a significant extent. It was diminished on account of him being drunk at the time of the crime. Against this background, this court entirely accepts the evidence of witness S.Š. as reliable.

Although there is no material evidence of the participation of the second accused in the criminal offence at issue, and since his participation became known only at the beginning of 2006, there is the evidence given by witness S.Š., who stated that the second accused had been a perpetrator of the criminal offence at issue and who described the participation of the second accused in detail. ..."

18. In his appeal the applicant argued that the evidence given by S.Š. had been unreliable owing to his personality disorder and that his statements given before the investigating judge and at the trial were contradictory and illogical. Thus, he said that the applicant and M.G. had had secret conversations and had spoken in lowered voices. If the conversations had been secret, then they would not have been conducted within the hearing of a third person. As regards the placement of their respective beds, in his statement before the investigating judge S.Š. said that the bed occupied by M.G. had been in the middle, between the bed occupied by the applicant and the witness, while at the trial he said that the bed occupied by the applicant had been in the middle. As regards the time of the alleged secret conversations between the applicant and M.G., S.Š. firstly claimed that they mostly took place in the afternoon and at the hearing held on 26 June 2006 he said that they took place in the evening, after dinner. It was improbable and unconvincing that two perpetrators of such grave criminal offences would discuss the details of these offences in front of a third person. S.Š. also mentioned that a woman, the key prosecution witness in the proceedings, had altered her previous statement in favour of the accused. However, there had been no such witness in the proceedings. He also repeatedly stated that a person with the surname S. had also been implicated in the murder of the three people in question. However, the person of that name was actually one of the murder victims. S.Š. had no personal direct knowledge of the murders at issue. When giving his evidence at the trial he constantly repeated the phrase 'I concluded' which could not be the basis for the applicant's conviction. The witness enclosed his so called "notes", allegedly made during the conversations between him and M.G. However, these notes were a list of meaningless words. His statement was in contradiction to those given by inmates from the same room, J.M. and N.P. Furthermore, there was no logic to the whole story and he (the applicant) had not even been to Croatia in 1998, but had been living in Banja Luka, Bosnia and Herzegovina, where he had run his own business since 1990. He claimed that he had never met M.G. before. Finally, no material evidence found in the house where the murders had been committed had any connection with him. The applicant argued that the findings of the trial court had been completely arbitrary to the point that they ran contrary to common sense and the basic requirements of a fair trial.

19. The first-instance judgment was upheld by the Supreme Court on 14 March. The relevant part of the judgment reads:

> "The accused M.G. and Neđo Ajdarić in their respective appeals unsuccessfully try to challenge the evidence given by witness S.Š. However, contrary to their assertions, the first-instance court gave valid reasons for accepting the statement given by that witness and these reasons have not been called into question by the allegations in the appeals.

It is firstly to be stated that the statement of witness S.Š. is not in contradiction with other evidence as the appellants wrongly claim. Witnesses J.M. and N.P., who gave more details about the circumstances in their room in Zagreb Prison Hospital than witness T.M., said that the accused M.G. and Neđo Ajdarić spent more time together than with other inmates, by which they disputed the defence put forward by the accused, in particular the allegation by Ajdarić that he spoke to M.G. less than to the other inmates. The fact that the other inmates did not hear the conversations described by S.Š. does not cast doubt on that part of his statement, because witness J.M. said that he had regularly watched television, that M.G. had mostly stayed in the room with Ajdarić and that S.Š., who had sometimes watched television, would soon return to the room. Thus, witness S.Š., as it is indirectly shown from the statement of witness J.M., often had the opportunity to be alone in the room with the accused while the other inmates were watching television and was able to hear the confidential conversations which they had obviously then held.

The accused M.G. claims in his appeal that it is improbable that the perpetrators of such crimes would meet after seven years in the same room in Zagreb Prison Hospital and that it is excluded that, even if they met in such circumstances, they would discuss the crimes at issue in the presence of a third person. Such behaviour would be contradictory to the profiles of persons who conspired and planned to commit three murders in a professional manner. He also argued that he had been at large for five years and that in that period he would have had every chance to discuss the crimes at issue with the other perpetrator.

However, [this court finds] that the accidental placement in the same room of persons who committed a criminal offence together cannot be regarded as impossible. The accused Neđo Ajdarić was detained in connection with a criminal offence unrelated to the one examined in these proceedings and was placed in Zagreb Prison Hospital, which only has a couple of rooms in each ward. At that time he was not yet a suspect in respect of the criminal offences which were the subject of the proceedings conducted against M.G. and therefore no formal obstacle existed for placing them in the same room.

On the other hand, although the accused M.G. had indeed been at large between the year 2000 (when his detention was lifted) and the year 2005 (when he was again detained) it is certain that, since an appeal had been lodged against the first-instance judgment acquitting him (that is to say that the criminal proceedings against him were still pending), he had a reason to avoid public and frequent contact with the accomplice, the accused Ajdarić. Finally, if the accused saw each other in that period and discussed the criminal offences they had committed, it is certain that after the judgment acquitting [M.G.] had been quashed and he had been detained, in view of these new circumstances and the development of the proceedings, they had something to discuss during their stay in Zagreb Prison Hospital.

The description of the conversations between the accused given by S.Š. is neither unconvincing nor illogical: the accused G. and Ajdarić, as described by S.Š, conducted these conversations when all or at least most of the other inmates were absent, that is to say that they talked in secret as far as it was possible. It is obvious that because the accused talked in lowered voices about the criminal offences in question the witness S.Š did not hear all the details of their conversations. This is precisely why the parts of the statement given by witness S.Š in which he reconstructs the content of these conversations on the basis of the parts of these conversations that he had heard do not fit with the facts established on the basis of the other evidence.

Thus, witness S.Š obviously wrongly understood the role of S., whom the accused had mentioned. However, if the evidence given by S.Š had been false, as suggested by the accused M.G. in his appeal, and had relied on facts from the newspapers, he surely would not have mentioned S. in the same context, since this is not shown in the previous proceedings.

Contrary to the allegations in the appeal by accused M.G., on all three occasions when he gave his statement witness S.Š. reproduced the words and sentences from the conversations of the accused in relative detail, and certain illogical details in his statements, stressed in the appeal by the accused Neđo Ajdarić, actually contradict the argument in that appeal that his statement had been fabricated, that the witness had been following instructions and had been told what to say. The accused did not specify who had [supposedly] instructed the witness and in whose interest that would be. Lastly, had the statement of that witness been fabricated and had he memorised it according to someone's instructions, it would be expected that the memorised statement would be entirely in accordance with all the other evidence. It is precisely the contradictions about certain events (allegations of witness S.Š. about the telephone call on a mobile telephone from Bosnia, participation of S. and similar) that show that his statement was not fabricated and [that he was not] following instructions.

The accused also point to the character of witness S.Š. and stress the part of the psychiatric opinion drawn up in the proceedings against him which states that he has a histrionic personality disorder, on the basis of which [the accused] concluded that he is inclined to fabricating stories. However, the accused ignore other conclusions of that report according to which the intellectual capacity of S.Š. is within normal limits and there are no indications of mental illness.

Against the above background, there was no need for a further psychiatric examination of witness S.Š. ..."

20. On 28 August 2007 the Supreme Court, acting as the third-instance court, again upheld the applicant's conviction. The relevant part of the judgment reads:

"Contrary to the allegations by both accused in their respective appeals, ... the Supreme Court of the Republic of Croatia, as the third-instance court, finds that the second-instance court correctly held that the first-instance court gave a detailed analysis and assessment of the statement given by witness S.Š., who had spent some time with both accused in Zagreb Prison Hospital. Witness S.Š., contrary to the other inmates, was often alone in the room with the accused and was thus able to hear their confidential conversations, which is in accordance with the statements given by witnesses J.M. and N.P., who also gave evidence about the events in Zagreb Prison Hospital, and on whose statements both accused rely in their appeals. They said, *inter alia*, that the accused had spent more time together than with the other inmates, by which they rebutted the defence argument of the accused, in particular that of Neđo Ajdarić, who said that he had talked to the accused M.G. the least. Witness J.M. also confirmed that the accused and witness S.Š. had not watched television regularly because the accused M.G. had mostly stayed in the room, while the accused Neđo Ajdarić and witness S.Š. had watched television only occasionally."

21. On 20 February 2008 the Zagreb Municipal Criminal Court (*Općinski kazneni sud u Zagrebu*) acquitted the applicant of the charges of car theft.

22. The applicant's constitutional complaint lodged in connection with the criminal proceedings whereby he had been found guilty of three counts of murder was dismissed on 24 June 2008. It was served on the applicant's counsel on 15 September 2008. The relevant part of the Constitutional Court's decision reads:

> "The constitutional right to a fair trial concerns procedural guarantees only. From that standpoint the Constitutional Court examines possible procedural violations in the court proceedings and on that basis, in view of the proceedings as a whole, assesses whether the proceedings were conducted in a manner which ensured a fair trial.
>
> In the case at issue, the applicant's guilt was established in the criminal proceedings after the evidence had been presented before the first-instance court. The applicant was able to follow the proceedings, was legally represented, was able to comment on and to call evidence concerning the decisive facts and to carry out all lawful procedural acts. The first-instance judgment noted the evidence which was presented before it and the evidence on which it based its conclusion that the applicant had committed the criminal offence at issue. The first-instance court analysed all the evidence and facts relevant for determining the existence of the criminal offence of murder and gave valid legal reasons for its findings.
>
> The guarantees of a fair trial ... require that the proceedings be viewed as a whole (that is to say that the proceedings before the Sisak County Court and those conducted before the Supreme Court in the second and third instance are to be seen as one) and an assessment be made of whether the proceedings were conducted in a manner which assured the applicant a fair trial.
>
> Having reviewed the findings of the Supreme Court's judgment ... of 28 August 2007, the Constitutional Court has not found any circumstances which would indicate that that judgment violated the applicant's right to fair trial in any respect."

3. Other relevant documents

23. The applicant submitted a medical report in respect of S.Š. drawn up on 2 June 1996 by the Invalidity Commission of the Croatia Pension and Invalidity Assurance Fund concerning S.Š. The relevant part of the report reads as follows:

> "The insured has been a member of the Croatian Army since 16 February 1994. On 18 August 1991 during an armed conflict in Grubišno Polje he broke his foot and [in addition] has had a hearing impairment since then.
>
> In 1993 he was injured in an explosion ...
>
> ...
>
> The insured ... suffers from impaired hearing as a consequence of [exposure to explosives] ..."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

24. The applicant complained that he was convicted of three counts of murder solely on the basis of hearsay evidence of a witness suffering from emotional instability and histrionic personality disorder and that the conviction was completely arbitrary and ran contrary to the guarantees of a fair trial, the right to the presumption of innocence and the principle of the equality of arms.

He relied on Article 6 §§ 1, 2 and 3 of the Convention, which reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

25. The Government maintained that the application had been introduced out of the six-month time-limit. They argued that the Court

stamp on the application form bore the date of 30 March 2009, while the final decision in the present case, adopted by the Constitutional Court on 24 June 2008, had been served on the applicant's counsel on 15 September 2008.

26. The applicant argued that his application had been lodged on 13 March 2009.

27. The Court notes that the postal stamp on the envelope in which the application form was sent bears the date of 13 March 2009. It follows that the present application was submitted within six months of the date when the final domestic decision had been served on the applicant.

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

B. Merits

1. The parties' submissions

29. The applicant argued that the reasoning of the national courts as to the question of his involvement in the murder of three persons in 1998 in Kutina had been arbitrary to point that it ran contrary to the basic guarantees of a fair trial. He stressed that his conviction was based solely on hearsay evidence given by a mentally ill individual and stressed that that evidence had not been corroborated in any manner. In this connection he pointed out that certain forensic evidence and fingerprints found at the scene of the crime could in no way be connected with him. Furthermore, the national courts had given no adequate answers to a number of his objections raised during the criminal proceedings against him.

30. The Government argued that witness S.Š. had given an identical statement before the police, the investigating judge and twice at the trial. The applicant had had the opportunity to put questions to the witness and make his list of evidence. During the trial more than thirty witnesses had been heard and various expert analysis had been carried out. The national courts had given adequate reasons for the applicant's conviction.

31. As regards S.Š., they further argued that he had not retired because of his hearing impairment.

2. The Court's assessment

(a) General principles

32. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before

them, establish facts and interpret domestic law. The Court will not, in principle, intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair as required by Article 6 § 1 (see, *mutatis mutandis*, *Van Kück v. Germany*, no. 35968/97, §§ 46-47, ECHR 2003-VII and *Khamidov v. Russia*, no. 72118/01, § 170, ECHR 2007-XII (extracts)).

33. The Court reiterates further that, in view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37), the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Dulaurans v. France*, no. 34553/97, § 33, 21 March 2000; *Donadzé v. Georgia*, no. 74644/01, §§ 32 and 35, 7 March 2006; and *Dima v. Romania*, no. 58472/00, § 34, 16 November 2006).

34. Also, 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 (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, with further references).

35. The Court has also held in cases concerning various issues under Article 6 of the Convention in connection with criminal proceedings that the burden of proof is on the prosecution and that any doubt should benefit the accused (see, *mutatis mutandis*, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 77, Series A no. 146; *Lavents v. Latvia*, no. 58442/00, § 125, 28 November 2002; and *Melich and Beck v. the Czech Republic*, no. 35450/04, § 49, 24 July 2008).

(b) Application of these principles to the present case

36. The Court notes at the outset that the applicant was convicted of three counts of murder motivated by personal gain and sentenced to forty years' imprisonment solely on the basis of evidence given by S.Š. The national courts expressly stated that there had been no other evidence implicating the applicant in the murder of three persons at issue (see paragraph 17 above).

37. As to the evidence given by S.Š. as such, the Court notes as follows.

38. A psychiatric examination of S.Š. conducted for the purposes of the criminal proceedings against him on charges of murder shows that his personality had emotionally unstable and histrionic characteristics (for details see paragraph 16 above). A course of compulsory psychiatric treatment of S.Š. was recommended (see paragraph 16 above) but was not

followed, according to S.Š.'s own testimony that he had never been treated by a psychiatrist (see paragraph 10 above).

39. The evidence given by S.Š. related exclusively to alleged secret conversations conducted in lowered voices between the applicant and M.G. However, according to M.G. it was he alone who told S.Š. what he was accused of (see paragraph 13 above).

40. The Court also notes that the part of S.Š.'s evidence referring to the applicant's involvement in the murder of three persons he was charged with was imprecise and unclear and concerned his own conclusions rather than concrete facts. When asked to reproduce exactly what the applicant and M.G. were saying, the witness said that he could not do so, but that what he had told the court was what he, the witness, had concluded from their conversations (see paragraph 10 above).

41. Furthermore, S.Š. had conflicts both with M.G. and the applicant. As regards M.G., they had a quarrel about a lawyer representing both of them in the respective criminal proceedings, while with the applicant he had an argument about a Yugoslav People's Army officer. He also expressed prejudice against the applicant as a foreign national and misgivings as to the ways the applicant became "rich" (see paragraph 12 above).

42. At the same time statements of S.Š. are also contradictory. When giving his evidence before the trial court at the hearing held on 4 April 2006 he said that the area "Veseli Brijeg", from which the signals from a mobile telephone had allegedly been sent, was near Banja Luka in Bosnia and Herzegovina, while at the hearing held before the trial court on 26 June 2006 he said that that same area was near Kutina, Croatia. On 4 April 2006 he said that the conversations between the applicant and M.G. had mostly taken place in the afternoons whereas in his statement of 26 June 2006 he said that the two accused had mostly spent time together in the evening, after dinner.

43. As regards S.Š.'s explanations as to when he, M.G. and the applicant had arrived at the Zagreb Prison Hospital, in his first statement given on 3 March 2006 S.Š. said that he had arrived on 23 November 2005, M.G. the day after and the applicant five or six days later. In his statement given on 4 April 2006 S.Š. said that he had arrived in "the end of November 2005", M.G. "sometime in December 2005" and the applicant in "mid December 2005". In his statement given on 26 June 2006 S.Š. said that he had arrived "in mid November 2005", M.G. "after him" and the applicant "ten days later". Apart from those inconsistencies on a rather simple issue, it does not at all correspond with the actual date of the applicant's arrival, namely 29 December 2005.

44. In his evidence given before the investigating judge on 3 March 2006 S.Š. said that the bed occupied by M.G. had been in the middle, between the one occupied by the applicant and the one occupied by the witness himself, while at the hearings held on 4 April and 26 June 2006 S.Š.

said that the applicant's bed had been in the middle. Other witnesses who were at the critical time placed in the same room in Zagreb Prison Hospital, J.M. and N.P., said that the bed occupied by the applicant had been apart from the other beds and not close to the one occupied by S.Š.

45. S.Š. also repeatedly stated that a person with the surname S. had as well been implicated in the murder of the three people in question. However, the person of that name was actually one of the murder victims. He also said that the crucial witness, a woman, had changed her testimony in the accuseds' favour. There was, however, no such witness in the criminal proceedings against the applicant.

46. All these discrepancies called for an increasingly careful assessment by the domestic courts. In this connection the Court points out to the requirement that the parties in the proceedings have to be heard and their objections properly addressed and notes that the applicant made serious objections as to the reliability of evidence given by S.Š., pointing out to various discrepancies and lack of logic in the statement of S.Š., as well as to the lack of any connection between him and the criminal offences at issue (see paragraph 18 above). The applicant referred to specific facts and documents which called into question the statement given by S.Š. Thus, he pointed to the confused and imprecise nature of the statements by S.Š. As to the allegation by S.Š. that the applicant had opened a "business" in Banja Luka with the money taken from the victims in 1998, the applicant presented documents showing that he had started his car-dealing enterprise back in 1990. He also challenged the reliability of S.Š. as a witness on the ground of his mental illness.

47. The Court finds the responses of national courts to those arguments inadequate. They made no effort to verify the statements made by S.Š. but accepted them as truthful, irrespective of the fact that medical documentation showed that he suffered from emotional instability and histrionic personal disorder.

48. The national courts also made no comments about the contradictory witness statements such as testimony of J.M. and N.P., two other inmates occupying the same room, whose evidence about the placement of beds in that room contradicts the evidence given by S.Š. While S.Š. firstly stated that his bed had been placed next to the one occupied by M.G. and later on that his bed had been next to the one occupied by the applicant, J.M. stated that between the bed occupied by M.G. and S.Š. there had been the one occupied by inmate B., and that the applicant's bed had been positioned perpendicular to the other beds. N.P. stated that he had occupied the bed between M.G. and S.Š. and that the applicant's bed had been on the other side. These statements appear important, since S.Š. claimed that he was able to overhear the conversations between the applicant and M.G. because his bed had been next to theirs.

49. Furthermore, S.Š. said that upon the applicant's arrival in room no. 206 in Zagreb Prison Hospital the applicant and M.G. shook hands and greeted each other as if they had known each other for a long time. Contrary to this, J.M. said that the applicant and M.G. had had almost no contact in the first few days after the applicant's arrival and that there had been nothing to indicate that they had known each other from before. M.G. also said that in the first few days he had had almost no contact with the applicant.

50. The national courts made no comments on any of the above.

51. Against the above background, the Court finds that in the present case the decisions reached by the domestic courts were not adequately reasoned. Thus, obvious discrepancies in the statements of witnesses as well as the medical condition of S.Š. were not at all or not sufficiently addressed. In such circumstances it can be said that the decisions of the national courts did not observe the basic requirement of criminal justice that the prosecution has to prove its case beyond reasonable doubt and were not in accordance with one of the fundamental principles of criminal law, namely, *in dubio pro reo* (see, *mutatis mutandis*, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 77, Series A no. 146; *Lavents v. Latvia*, no. 58442/00, § 125, 28 November 2002; and *Melich and Beck v. the Czech Republic*, no. 35450/04, § 49, 24 July 2008).

52. The foregoing considerations are sufficient to enable the Court to conclude that the criminal proceedings against the applicant, taken as a whole, constituted a violation of the applicant's right to a fair trial under Article 6 § 1 of the Convention.

53. In view of these findings the Court does not consider it necessary to address the applicant's complaints under Article 6 §§ 2 and 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. As regards pecuniary damage, the applicant claimed EUR 12,845.844 on account of loss of earnings during his detention; EUR 159,084 on account of the value of his company and the loss of profit because the company, owing to his imprisonment, had to cease its activity;

EUR 1,362.91 on account of fees he had to pay for cancelling a sale contract when he had been imprisoned; and EUR 3,000 on account of the expenses his family, living in Bosnia and Herzegovina, had incurred in order to visit him in prison in Croatia. He also claimed EUR 100,000 in respect of non-pecuniary damage.

56. The Government objected, arguing that the amounts claimed were excessive, unfounded and unsubstantiated.

57. As regards pecuniary damage, the Court does not discern any causal link between the violation found and the damage claimed. Accordingly, it dismisses the claim for pecuniary damage.

58. The Court reiterates further that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this provision not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85, and *Lungoci v. Romania*, no. 62710/00, § 55, 26 January 2006). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be the retrial of the applicant in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see, *mutatis mutandis, Salduz v. Turkey* [GC], no. 36391/02, § 72, 27 November 2008).

59. Furthermore, the Court considers that the applicant must have suffered some non-pecuniary damage on account of his arbitrary conviction. That damage cannot be sufficiently compensated for by a finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

60. The applicant also claimed EUR 4,033.12 for the costs and expenses incurred before the domestic courts and EUR 29,755.76 for those incurred before the Court.

61. The Government objected, arguing that the applicant could not claim the costs he had incurred in the domestic proceedings and that he had not proved that he had incurred any costs in the proceedings before the Court.

62. 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.

63. As regards the costs and expenses incurred in the domestic proceedings, the Court notes that the applicant has the possiblity of seeking the reopening of those proceedings and that in the fresh proceedings the national courts will have to address the issue of the costs and expenses

incurred in the criminal proceedings against the applicant as a whole. Against this background, the Court rejects the claim for costs and expenses in the criminal proceedings against the applicant before the ordinary national courts. However, the costs and expenses incurred by the applicant before the Constitutional Court would not be taken into account in the fresh criminal proceedings. The Court notes that the applicant's constitutional complaint was aimed at remedying the situation in respect of which the Court has found a violation of Article 6 of the Convention. Therefore, the Court awards the applicant the sum of 674 euros (EUR) for costs and expenses incurred before the Constitutional Court.

64. Furthermore, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant on this amount.

C. Default interest

65. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaints under Article 6 §§ 2 and 3 of the Convention;

4. *Holds*
   (a) that the respondent State shall secure, within six months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, should the applicant so request, the reopening of the proceedings;
   (b) 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, which are to be converted into Croatian kuna at the rate applicable on the date of settlement:
      (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 8,674 (eight thousand six hundred and seventy-four euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(c) 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 13 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President