



Insufficient reasoning in case of a man sentenced to 40 years' imprisonment deprived him of a fair trial

In today's Chamber judgment in the case **Ajdarić v. Croatia** (application no. 20883/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 6 § 1 of the European Convention on Human Rights
The Croatian authorities asked to reopen the proceedings, should so be requested, within six months following the date on which the Court's judgment becomes final.

The case concerned a man convicted of three murders and sentenced to 40 years' imprisonment solely on the basis of hearsay evidence.

Principal facts

The applicant, Neđo Ajdarić, is a national of Bosnia and Herzegovina who was born in 1953 and is currently serving a 40-year prison term in Lepoglava State Prison (Croatia) for three murders.

In 2005 he was arrested in Croatia and placed in detention on suspicion of having committed a car theft.

In December 2005 Mr Ajdarić fell ill and was transferred to Zagreb Prison Hospital, in room no. 206, together with M.G. and S.Š. and five other inmates. M.G. was detained in connection with pending criminal charges against him for having committed three murders in Kutina (Croatia) in 1998 and for having taken about 960,000 Croatian kuna (approximately 129,000 euros) from the victims' house. S.Š. was a former policeman, suffering from emotional instability, histrionic personality disorder and impaired hearing, who had been sentenced to seven years' imprisonment for attempted murder.

In 2006, S.Š. contacted the Bjelovar police department informing it that he had overheard conversations between M.G. and Mr Ajdarić revealing that the latter was implicated in the triple murder that M.G. had been accused of. In April 2006 Mr Ajdarić was charged with the murders committed together with M.G.

During the hearings, S.Š.'s only evidence related to alleged secret conversations "in lowered voices" between Mr Ajdarić and M.G. When asked, S.Š. could not reproduce exactly what they were saying, but said that what he had told the court was what he concluded from their conversations. His statements about specific issues, such as the dates of their respective hospitalisation, the position of their beds in the room and the time when the alleged conversations had taken place, were often contradictory or inconsistent.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Furthermore, S.Š. alleged that a person with the surname S. had been implicated in the murders, but that person actually turned out to be one of the murder victims. He also claimed that a crucial witness, a woman, had changed her testimony in favour of the accused, but no such witness was identified in the criminal proceedings.

Both Mr Ajdarić and M.G. denied that they had ever met before their hospitalisation in the prison hospital or that they had ever talked about the murders. Moreover, Mr Ajdarić claimed that at the time of murders, he had been living in Bosnia and Herzegovina, and that he had never been to Kutina, where the murders were committed.

In September 2006 Sisak County Court, solely on the basis of the evidence given by S.Š., found Mr Ajdarić guilty of three murders motivated by personal gain and sentenced him to 40 years' imprisonment.

Following Mr Ajdarić's appeal, the Supreme Court upheld the County Court's judgment in March, and again in August 2007.

In February 2008, Mr Ajdarić was acquitted of the charges of car theft by the Zagreb Municipality Criminal Court.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 (right to a fair trial), 2 (presumption of innocence) and 3 (equality of arms), Mr Ajdarić complained about the unfairness of his conviction, as it was solely based on a conversation between himself and a co-detainee, while he was hospitalised in a prison hospital, supposedly overheard by another prisoner who was mentally unstable.

The application was lodged with the European Court of Human Rights on 13 March 2009.

Judgment was given by a Chamber of seven, composed as follows:

Anatoly **Kovler** (Russia), *President*,
 Nina **Vajić** (Croatia),
 Peer **Lorenzen** (Denmark),
 Khanlar **Hajiyev** (Azerbaijan),
 Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that Mr Ajdarić had been convicted of three murders and sentenced to 40 years' imprisonment solely on the basis of evidence given by S.Š. and that the national courts had expressly stated that there had been no other evidence implicating Mr Ajdarić in the murders.

As to the evidence given by S.Š. as such, the Court noted that, according to psychiatric reports, S.Š. suffered from emotionally instability and histrionic personality disorder, but that he had not undergone the recommended compulsory psychiatric treatment.

The Court noted that the part of S.Š.'s evidence referring to Mr Ajdarić's involvement in the murders was imprecise and unclear and concerned his own conclusions rather than concrete facts, and that some of his statements were contradictory. It further found inconsistencies in S.Š.'s explanations on issues pertinent for establishing whether he had been able to overhear the alleged conversations. The Court also pointed to his false allegations that certain people were implicated in the murders or that they testified in the criminal proceedings.

The Court found that all these discrepancies called for an increasingly careful assessment by the domestic courts.

It noted that, during the proceedings, Mr Ajdarić had made serious objections as to the reliability of evidence given by S.Š., pointing to his mental illness, various discrepancies and the lack of logic in his statements, as well as to the lack of any connection between him and the murders.

The Court found that the national courts had not adequately responded to those objections, as they had made no effort to verify obvious discrepancies in S.Š.'s statements but accepted them as truthful, nor did they sufficiently address his medical condition. The Court considered that such lack of adequate reasoning by the national courts deprived Mr Ajdarić of his right to a fair trial.

The Court therefore found a violation of Article 6 § 1.

The Court further asked the Croatian authorities to reopen the proceedings, should Mr Ajdarić so request, within six months following the date on which the Court's judgment becomes final.

Article 6 §§ 2 and 3 (presumption of innocence; principle of the equality of arms)

In view of its finding the Court did not consider it necessary to address Mr Ajdarić's complaints under Article 6 §§ 2 and 3.

Article 41 (just satisfaction)

The Court held that Croatia was to pay Mr Ajdarić 9,000 euros (EUR) in respect of non pecuniary damage and EUR 8,674 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.