



Inability to make informed choice of lawyer undermined rights of the defence and fairness of proceedings as a whole

In today's **Grand Chamber** judgment¹ in the case of **Dvorski v. Croatia** (application no. 25703/11) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 6 §§ 1 (right to a fair trial) and 3 (c) (right to legal assistance of one's own choosing) of the European Convention on Human Rights.

The case concerned the refusal by the police to allow a lawyer hired by the applicant's parents to represent him while he was being questioned at a police station on suspicion of multiple murder, armed robbery and arson. The applicant confessed to the offences after signing a power of attorney authorising another lawyer to represent him.

The Court found that the police had not informed the applicant either of the availability of the lawyer hired by his family or of the lawyer's presence at Rijeka Police Station. During questioning the applicant had confessed to the offences with which he was charged, and his confession had been admitted in evidence at his trial. The Court observed that the national courts had not properly addressed that issue, and in particular had failed to take the necessary measures to ensure a fair trial.

Principal facts

The applicant, Ivan Dvorski, is a Croatian national who was born in 1986 and lives in Rijeka (Croatia).

In the early hours of 13 March 2007 three murders, an armed robbery and an arson attack were committed in a residential neighbourhood of Rijeka. At about 1 p.m. on the same day, Mr Dvorski was brought to Rijeka Police Station for questioning. He remained there until he was formally arrested the following day.

According to Mr Dvorski, on the morning of 14 March 2007 his mother called G.M., a lawyer who knew him from a previous trial, and asked him to represent her son. G.M. came to Rijeka Police Station at 10.45 a.m. but the police officers refused to let him in. G.M. wanted to file a criminal complaint but the police officers refused to register it. He reported the incident to the Rijeka Deputy County State Attorneys, and the court was also immediately notified. At around 1.30 p.m. Mr Dvorski's father signed a power of attorney authorising G.M. to represent his son. During the afternoon the lawyer made a further attempt to meet Mr Dvorski at the police station but was again refused access by the police officers. G.M. reported these events to the Chief of the Police Department.

On the evening of 14 March 2007 Mr Dvorski was interviewed by the police in the presence of a lawyer, M.R., who, according to the record of the police questioning, had been expressly designated by Mr Dvorski.

On 16 March 2007 an investigation was opened. On 12 July 2007 Mr Dvorski and two other people were indicted on three counts of aggravated murder and one count of arson, committed on 13 March 2007. On 24 July 2007 Mr Dvorski lodged an objection against the indictment, arguing that

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

there had been substantive and procedural flaws. He made no comments about his legal representation during the police questioning.

On 2 April 2008 Mr Dvorski asked the court to call the lawyer G.M. as a witness in connection with the alleged unlawful extraction of his confession by the police. He stated that G.M. had not been allowed to see him while he had been in police custody and that the police officers had forced him to make a confession. The court dismissed the request on the grounds that all the relevant facts had already been established.

On 30 June 2008 the court found Mr Dvorski guilty of three counts of aggravated murder and of armed robbery and arson and sentenced him to 40 years' imprisonment.

On 6 November 2008 Mr Dvorski lodged an appeal against the first-instance judgment with the Supreme Court, which dismissed both that appeal and a further appeal by Mr Dvorski as ill-founded.

On 11 March 2010 Mr Dvorski complained to the Constitutional Court, which, endorsing the reasoning of the Supreme Court, concluded that the proceedings as a whole had been fair and that there was no evidence that Mr Dvorski had been ill-treated while in police custody. His complaint was therefore dismissed.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of one's own choosing), Mr Dvorski complained that he had not been allowed to be represented by the lawyer G.M. during police questioning and that he had not had a fair trial.

The application was lodged with the European Court of Human Rights on 16 April 2011. On 28 November 2013 a Chamber of the First Section of the Court gave a [judgment](#) in which it held, by a majority, that there had been no violation of Article 6 §§ 1 and 3 (c) of the European Convention on Human Rights. On 26 February 2014 Mr Dvorski requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber). On 14 April 2014 the panel of the Grand Chamber [accepted](#) that request. A [hearing](#) was held on 21 January 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
 Josep **Casadevall** (Andorra),
 Guido **Raimondi** (Italy),
 Mark **Villiger** (Liechtenstein),
 Boštjan M. **Zupančič** (Slovenia),
 Ján **Šikuta** (Slovakia),
 Päivi **Hirvelä** (Finland),
 Luis **López Guerra** (Spain),
 Zdravka **Kalaydjieva** (Bulgaria),
 Paulo **Pinto de Albuquerque** (Portugal),
 Helen **Keller** (Switzerland),
 Paul **Mahoney** (the United Kingdom),
 Johannes **Silvis** (the Netherlands),
 Valeriu **Grițco** (the Republic of Moldova),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Ksenija **Turković** (Croatia),
 Jon Fridrik **Kjølbro** (Denmark),

and also Lawrence **Early**, *Jurisconsult*.

Decision of the Court

Article 6 §§ 1 and (3) (right to a fair trial and right to legal assistance of one's own choosing)

On 14 March 2007, between 8.10 p.m. and 11 p.m., Mr Dvorski had been questioned by the police in the presence of a lawyer, M.R., whom he had chosen of his own free will according to the Government. His statement to the police had been used as evidence in his subsequent criminal trial.

However, the Court observed that that morning another lawyer, G.M., had informed the Deputy County State Attorneys that he had unsuccessfully tried to contact the applicant, who was at Rijeka Police Station. In his complaint to the Chief of the Police Department, G.M. had alleged that he had made a further attempt to see Mr Dvorski during the afternoon, but had again been told by the police to leave. When Mr Dvorski had been brought before an investigating judge, he had alleged that the police had never informed him that G.M. had tried to contact him. During the trial he had complained of the police's refusal to allow G.M. to meet him and had asked the court to hear evidence from G.M., but his request had been refused.

The Court therefore found it sufficiently established that G.M. had been hired by one or both of Mr Dvorski's parents, that he had attempted on more than one occasion on 14 March 2007 to contact Mr Dvorski at Rijeka Police Station and that the police officers there had told him to leave, without informing Mr Dvorski that G.M. had come to see him. Accordingly, while Mr Dvorski had formally chosen the lawyer M.R. to represent him during police questioning, that choice had not been an informed one because he had had no knowledge that another lawyer, hired by his parents, had come to the police station with a view to representing him.

Domestic law stated clearly that a defence lawyer could be hired by the accused himself or by his close relatives, including his parents. The accused could not expressly refuse the lawyer he was assigned unless he was informed that his relatives had hired a different lawyer for him. The police had thus had an obligation to inform Mr Dvorski that G.M., having been hired by his parents, had come to the police station. However, the police had omitted to do so and had also refused to allow G.M. to see Mr Dvorski, who had later signed a power of attorney authorising M.R. to represent him without knowing that G.M. had offered his services. Mr Dvorski had therefore been denied the opportunity to choose to be represented by G.M. during police questioning. The Court was not convinced that that restriction had been justified by relevant and sufficient grounds.

Furthermore, it could not be maintained that by signing the power of attorney in favour of M.R., Mr Dvorski – who had been unaware that G.M., the lawyer hired by his parents, had been trying to see him – had unequivocally waived his right under Article 6 of the Convention to be represented by a lawyer of his own informed choice.

The Court noted that Mr Dvorski's statement to the police had been used in convicting him, although it had not been the central platform of the prosecution's case. It also noted that Mr Dvorski had never complained during the criminal proceedings about the quality of the legal advice provided to him by M.R. However, the Code of Criminal Procedure required that a suspect should first be invited to hire a lawyer of his or her own choosing. If that lawyer was not available, a replacement had to be chosen from a list of duty lawyers. There was no conclusive evidence that this procedure had been followed in the present case.

The Court noted that the record of Mr Dvorski's police questioning indicated that M.R. had talked to him in private for only about ten minutes before the questioning. This period appeared relatively short, bearing in mind the scope and seriousness of the accusations against Mr Dvorski. However, G.M., who already knew Mr Dvorski from a previous case, would have been available from the morning, long before the questioning had begun.

The Court again underlined the importance of the investigation stage for the preparation of criminal proceedings. Evidence obtained during that stage determined the framework for consideration of

the offence at the trial. The Court reiterated that a person charged with a criminal offence should already be given the opportunity at that stage to have recourse to legal assistance of his or her own choosing.

Where it was alleged that the appointment or the choice by a suspect of the lawyer to represent him had contributed to his making an incriminating statement at the outset of the criminal investigation, careful scrutiny by the authorities, notably the national courts, was called for. However, neither the trial court nor the investigating judge nor any other national authority had taken any steps to obtain evidence from G.M. or the police officers involved with a view to establishing the circumstances surrounding G.M.'s visit to Rijeka Police Station.

The Court was not convinced that Mr Dvorski had had an effective opportunity to object to the circumstances in which M.R. had been chosen to represent him. It could be presumed that the consequence of the police's conduct was that in his very first statement to the police, instead of remaining silent, as he could have done, Mr Dvorski had made a confession, which had subsequently been admitted in evidence against him.

The Court observed that the police had not informed Mr Dvorski either of G.M.'s availability or of G.M.'s presence at Rijeka Police Station. It noted that during police questioning, Mr Dvorski had confessed to the crimes with which he was charged and that his confession had been admitted in evidence at his trial. The national courts had not properly addressed that issue and, in particular, had failed to take the necessary measures to ensure a fair trial. Those factors, taken together, had irretrievably prejudiced Mr Dvorski's defence rights and undermined the fairness of the proceedings as a whole.

The Court therefore found that there had been a violation of Article 6 §§ 1 and 3 (c).

Article 41 (just satisfaction)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Dvorski. It further held that Croatia was to pay Mr Dvorski 6,500 euros (EUR) in respect of costs and expenses.

Separate opinions

Judges Zupančič, Kalaydjieva, Pinto de Albuquerque, Turković, Silvis, Spielmann and Vehabović expressed separate opinions, which are annexed to the judgment.

The judgment is available in English and French.

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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.