

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

FIRST SECTION

CASE OF MARTIN v. ESTONIA

(Application no. 35985/09)

JUDGMENT

STRASBOURG

30 May 2013

FINAL

07/10/2013

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



In the case of Martin v. Estonia,

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

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

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 7 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 35985/09) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Keijo Martin ("the applicant"), on 4 July 2009.

2. The applicant was represented by Mr P. Järve, a lawyer practising in Pärnu. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he did not receive a fair trial because of a violation of his defence rights.

4. On 14 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1988 and lived in Pärnu-Jaagupi until his arrest. He is currently serving a prison sentence.

A. Pre-trial proceedings

6. On 21 May 2006 a sixteen-year-old, J., was killed in a forest close to a main road near the small town of Pärnu-Jaagupi. His body was found on 25 May 2006 and a criminal investigation was initiated on the same day.

7. On 29 May 2006 the applicant, along with J.'s other school mates, was interviewed as a witness.

8. On 1 July 2006 the applicant reached the age of eighteen.

9. On the same date Mr Järve, a lawyer, informed the authorities that he had signed agreements to defend A. and K., who were suspects in the criminal case.

10. On 19 July 2006 the applicant was arrested on suspicion of murder. He requested legal aid. On the same date he was interrogated in the presence of R., counsel appointed under the legal-aid scheme. The applicant denied the charges. On the following day R. met with the applicant in the detention facility.

11. On 21 July 2006 the applicant requested in writing that R. be appointed as his defence counsel. On the same date in the presence of R., the Pärnu County Court authorised the applicant's detention.

12. On 24 and 25 July 2006 R. again met with the applicant in the detention facility.

13. On 25 July Mr Järve and the applicant's parents signed a legal services agreement, under which Mr Järve was to act as the applicant's counsel. On the same day Mr Järve informed the police investigator of that fact and met with the applicant, who agreed to his acting as counsel. The applicant denied committing the murder he was suspected of. Between 25 July and 4 August 2006, Mr Järve met the applicant on six occasions. On Friday, 4 August 2006, the applicant expressed the hope that Mr Järve would visit him on the following Monday. He complained that he did not feel well, had pains in his heart and was extremely nervous. He and Mr Järve agreed that Mr Järve would request that the applicant be examined by a doctor. Mr Järve made such a request.

14. On Monday, 7 August 2006, Mr Järve was told that the applicant had been taken to a doctor.

15. The case file contains copies of two different hand-written requests by the applicant, both dated 7 August 2006, whereby he stated his wish to waive the services of Mr Järve. One of them reads:

> "I wish to terminate the services of Paul Järve as my counsel appointed by my parents and wish to be defended by lawyer [R.].
>
> Since I am an adult, this is my own decision."

The other one reads as follows:

> "I wish to terminate the services of Paul Järve as my lawyer appointed by my parents and wish to be defended by lawyer [R.].

> Since I am an adult, this is my own decision.
>
> At the same time I do not want my former counsel and parents to be informed of the act I have committed since I very much regret [it] and I simply feel very much ashamed.
>
> I want to inform my mother myself."

16. On the same date, 7 August 2006, the police investigator ordered that the applicant be granted legal aid and appointed R. as his counsel.

17. Later the same day (from 8.05 p.m. to 9.35 p.m.), the applicant was interrogated in the presence of R. He pleaded guilty and gave detailed statements about the circumstances of the offence. Subsequently, on 7 August 2006 (from 9.52 p.m. to 11.30 p.m.) and 8 August 2006 (from 12.42 p.m. to 1.30 p.m.) the applicant was taken to the crime scene in order to carry out an on-site reconstruction of the events and draw up a report including the applicant's on-site testimony. The investigative activity was video recorded and R. was present as counsel.

18. The case file contains copies of two handwritten "sincere confessions" by the applicant. They are dated 7 and 8 August 2006 and contain two different descriptions of the events. In the first, the applicant denies the charges, whereas in the second he admits to the killing of J.

19. On 8 August 2006 the applicant filled out a request for legal aid, noting that he wanted R. as his counsel.

20. On 8 August 2006, when Mr Järve inquired about the applicant's health, he was allegedly told that the applicant had been taken to another location and that he was no longer in the police detention facility. He was also told that the applicant had terminated his services as his defence counsel.

21. By the end of the day, Mr Järve was able to reach the police investigator overseeing the case by telephone. He was told that the applicant had terminated his services as counsel and that that role was being assumed by R. Mr Järve advised that he wanted to meet with the applicant in person so that he could record the termination of the legal services agreement and ascertain that the applicant had waived his services of his own free will. The investigator refused to authorise such a meeting. According to Mr Järve, she initially said that the applicant had instructed the termination of his services in writing, but refused to show him the instruction; subsequently she said that she could "go and have this letter written right away".

22. Mr Järve learned from unofficial sources that the applicant had been taken to the crime scene in order to carry out an on-site reconstruction of the events.

23. On 8 August 2006 Mr Järve lodged a complaint with the Lääne District Prosecutor's Office that the applicant's defence rights had been breached. He considered that the termination of his services by the applicant had not been voluntary. Mr Järve noted, *inter alia*, that at his last meetings

with the applicant, the applicant had been frightened and had complained that investigator S. had threatened to take him, handcuffed, to Pärnu-Jaagupi and make him confess to the murder.

24. On 9 August 2006 the applicant talked to his mother.

25. On 10 August 2006 the applicant, in the presence of a prosecutor and defence counsel R., confessed to the murder of J. The questioning of the applicant and his confession were video recorded.

26. On 11 August 2006 R. learned that a new client agreement for the defence of the applicant had been signed with lawyer G.

27. On 15 August 2006 Mr Järve's complaint was dismissed by a prosecutor who had been at the crime scene reconstruction, along with the applicant and police officers. According to the prosecutor's decision, on 21 July 2006 the applicant had requested in writing that R. be appointed as his defence counsel and had asserted that he wished no other counsel. Furthermore, the applicant had written two requests to the police on 7 August 2006, in which he had terminated the services of Mr Järve and requested that he be assisted by R. On the same date, a police inspector had drawn up a decision to grant the applicant legal aid in which R. was named as the applicant's counsel. From 7 August 2006 R. had participated as the applicant's counsel in all procedural measures. On 9 August 2006 the prosecutor had talked to the applicant, who had confirmed that he trusted R. and stated that he wanted him to act as counsel. The applicant had not had any complaints against the police. The prosecutor noted that Mr Järve no longer had any authority as the applicant's counsel and that G. was currently acting as his counsel.

28. On 16 August 2006 Mr Järve made a criminal complaint to the police. He requested that it be verified whether investigators M. and S. had committed criminal offences under Articles 289 (misuse of official position) and 291 (abuse of authority) of the Penal Code (*Karistusseadustik*). On 28 August 2006 the internal control department of the Police Board informed Mr Järve that no criminal proceedings had been initiated. In respect of the alleged misuse by M. of his official position, it was found that the applicant had terminated Mr Järve's services as counsel and had wanted to be defended by R.; thus, his defence rights had not been violated by M. As to the question whether S. had committed an abuse of authority, it was noted that that offence presupposed the unlawful use of a weapon, special equipment or violence. Violence in this context meant a threat to kill, cause health damage, or cause significant damage to or destroy property; causing damage to the health of another person, or beating, battery or other physical abuse; or continuous physical abuse or abuse which caused great pain. It was found that the alleged threat by S. to handcuff the applicant, take him to Pärnu-Jaagupi and make him confess to the murder did not fall under Article 291 of the Penal Code. An appeal to a district prosecutor's office could have been lodged against the refusal to initiate criminal proceedings.

29. In the meantime, on 18 August 2006 Mr Järve sent a memorandum concerning the circumstances to the Board of the Bar Association. On 22 August 2006 the Board of the Bar Association decided to send Mr Järve's letter for reply to the State Prosecutor's Office and request an explanation from R. about the circumstances in which he took over the functions of counsel. In a reply of 22 September 2006, R. explained that in the evening of 7 August 2006 he had been called by an investigator and asked to be present during the applicant's interrogation, as the applicant had requested in writing. R. had gone to the police facility and examined the request, in which it had also been asked that no one be informed. The applicant had confirmed orally that he wished to terminate Mr Järve's services as counsel, since he had also been defending other suspects in the case. It stated that he wished instead to be defended by R. and that no one, including Mr Järve, be informed of the procedural measures. R. had not informed Mr Järve about the termination of his function of the applicant's counsel because, firstly, that had been the applicant's wish, and secondly, the investigator had undertaken to inform Mr Järve the next morning. On 11 August 2006 R. became aware that, based on a legal services agreement, G. had assumed the responsibilities of the applicant's counsel. On 3 October 2006 the Board of the Bar Association concluded that R. had not breached the rules of professional ethics.

30. In the meantime, on 22 August 2006 Mr Järve appealed against the district prosecutor's decision to the State Prosecutor's Office, which, by a decision of 22 September 2006, dismissed the appeal. According to the decision, the applicant had initially accepted Mr Järve as counsel, chosen by his parents, and had gone along with the tactics proposed by Mr Järve of denying the charges. However, during the evening of 7 August 2006 he had decided to tell the truth. It had been explained to him that his statements had contradicted those given by A. and K., who were also suspects at that stage of the proceedings. There might have been the need to arrange a confrontation with A. and K., whose counsel of choice was Mr Järve. Thus, the question of whether Mr Järve could properly act as the applicant's counsel had arisen. The applicant had understood the problem and had decided to continue with R. acting as his counsel. He had submitted a written request terminating Mr Järve's services as counsel and advising that he wanted R. to act on his behalf. He had also requested that Mr Järve and his parents not be informed about the crime he had committed before he had had an opportunity to talk to his mother in person. The state prosecutor considered that Mr Järve should have been informed about the termination sooner, and should have been given the documents indicating the applicant's wishes. The state prosecutor noted that the applicant had asked to have G. as his counsel and R. as his substitute, and that he had dispensed with Mr Järve's services. On 29 September 2006 a similar response was given by the State Prosecutor's Office to the Board of the Bar Association.

31. In the meantime, on 28 August 2006, the applicant was interrogated in the presence of counsel G. The applicant presented a different version of the events and denied having committed the murder.

32. On 30 August 2006, the applicant, who was being detained in a police detention facility, wrote a letter to his father in which he confessed to killing J. The letter was seized by the authorities.

33. On 5 September 2006 the police investigator ordered a psychiatric and psychological examination of the applicant. She noted that the applicant had presented two different versions of the events during interrogations. It was also noted that the applicant had been characterised by witnesses as a cruel person who tortured animals but also as a caring one who protected girls. On 24 October 2006 three experts, having examined the applicant and documentary evidence, gave their opinion: the applicant was suffering from adjustment disorder with depression. He had not been hindered from understanding or controlling his behaviour at the time of the commission of the crime and was capable of participating in criminal proceedings and serving a sentence.

34. In the meantime, on 7 October 2006 Mr Järve lodged a complaint with the Pärnu County Court against the decision of the State Prosecutor's Office. On 18 October 2006 the County Court upheld the complaint. It relied on the private law provisions on the waiver of a right by a third party for whose benefit a contract had been entered into, and found that the legal services agreement continued to be valid until such time as the applicant's parents and Mr Järve were informed in an appropriate manner of the applicant's waiver. In the operative part of its decision, the court ordered the investigative authorities and the prosecutor's office not to hinder Mr Järve's acting as the applicant's counsel until such time as the applicant's waiver was served on the parties to the legal services agreement in an appropriate manner.

35. On 23 October 2006 the two waiver requests signed by the applicant were served on Mr Järve, together with the County Court's decision.

36. Mr Järve appealed against the County Court's decision on 20 November 2006, noting that he had not been able to meet the applicant and that he found unconvincing the service on 23 October 2006 of waiver letters dated 7 August 2006. He called into question the existence on 7 August of the two letters of waiver, as the investigator had told him on 8 August 2006 that she could let the applicant write such a letter if he insisted. He pointed out that according to G., the applicant had told him that he had had nothing against Mr Järve and that he had agreed to R. acting as counsel only because he had been told that Mr Järve had not been available, which had not been true. Mr Järve was also of the opinion that the wording used in the waiver could not have been employed by the applicant.

37. On 5 December 2006 the Tallinn Court of Appeal refused to examine the appeal, as, according to the Code of Criminal Procedure, no appeal lay against the first-instance court's decision in such a matter.

38. In the meantime, on 1 December 2006 and then on 11 and 20 December the applicant was again interrogated. He admitted having committed the offence and gave additional statements. The interrogation reports of 1 and 11 December 2006 contain the applicant's confirmation that he did not wish counsel to be present. On 20 December 2006 Mr Järve was present as counsel.

39. In the meantime, on 18 December 2006 criminal proceedings were discontinued in respect of three other suspects, including A. and K., who had also been defended by Mr Järve.

B. Court proceedings

1. Proceedings in the Pärnu County Court

40. On 15 January 2007 the Lääne District Prosecutor's Office sent an indictment concerning the applicant to the Pärnu County Court.

41. In the court proceedings the applicant was assisted by Mr Järve as counsel.

42. At the hearing, the applicant denied the charges and explained that the statements he had made during the pre-trial investigation had been prompted by his wish to be relieved from the pressure exerted by the police investigator. He had been threatened with being sent to another detention facility and being placed in a cell with violent detainees. According to the applicant's statements in court, he had seen J. going to a forest together with an unknown youngster from a distance of about 100 metres. He had heard a strange sound as if a large animal had been making its way through the thicket and he had then entered the forest and found J. dead. He had been terrified and had been unable to control his actions. As a result, he had broken J.'s phone, which had started to ring; he had thrown the presumed murder weapon, which he had accidentally touched, into the bushes; and he had then fled from the murder scene. The applicant submitted that J.R., a police informant with whom he had shared a cell in the detention facility, had made him write the letter to his father. J.R. had subsequently handed that letter over to the authorities.

43. During the trial, on 3 December 2007, the County Court ordered a psychiatric and psychological expert examination of the applicant. In addition to questions about the applicant's condition during the commission of the crime, the court asked for an expert opinion on whether the applicant had been able to understand and control his behaviour and its consequences during the crime scene reconstruction on 7 August 2006 and during his interrogation on 10 August 2006. The court also asked for an expert

opinion, based on the recordings of the above procedural measures, on whether the applicant's statements during those procedural measures had been given voluntarily or under (prior) duress. On 26 February 2008 three experts expressed the opinion that the applicant was mentally healthy. During the examination the applicant had told the experts that he had not committed the murder. His statements to the contrary during the pre-trial investigation had been made under the pressure exerted by the police officers. He had told the truth in court. The experts concluded that at the time of the commission of the crime, the applicant had not been hindered from understanding that his actions were prohibited and controlling his behaviour in accordance with that understanding. Neither during the procedural measures in question nor at the time of his expert examination had the applicant displayed any mental disorders that prevented him from understanding and controlling his behaviour and its possible consequences. According to the experts, the assessment of the truthfulness and motives of a person's statements on the basis of his external behaviour could not be scientifically justified.

44. By a judgment of 17 June 2008 the County Court convicted the applicant of murder in a cruel and torturous manner, and of theft. The court was not convinced by the applicant's statements and considered his version of the events implausible. The court relied, *inter alia*, on an inspection report of the crime scene, forensic expert opinions, and a record of mobile phone calls from a phone company, according to which the last incoming call to J. had been made by the applicant. The court also examined the report on the crime scene reconstruction which also contained the applicant's on-site testimony. According to the judgment, the video recording of the reconstruction had been shown at the hearing. The video recording of the applicant's questioning and confession on 10 August 2008 had also been shown. The court found that details concerning the way in which J. had been killed, which the applicant had given during the pre-trial investigation, coincided with the forensic expert's opinion of how J. could have sustained the injuries. Moreover, some of J.'s personal belongings, such as a wallet and a key, had been found near the murder scene in places indicated by the applicant. The court further relied on the applicant's letter to his father sent from the detention facility. It also referred to the statements of two of the applicant's school mates, whom he had told before J.'s body had been found that J. had been killed and that his throat had been cut. The applicant's brother had testified that on the evening of the murder the applicant had unexpectedly given him some cash. According to statements made by J.'s mother, J. had always had cash on him and the court concluded that the applicant had emptied J.'s wallet before throwing it away.

45. The applicant was sentenced to ten years' imprisonment.

2. Proceedings in the Tallinn Court of Appeal

46. The applicant, still represented by Mr Järve, lodged an appeal with the Tallinn Court of Appeal. The appeal referred, *inter alia*, to the statements made by the applicant before the County Court that police officers had given him the text of the request to waive Mr Järve's services. He had not wished to write such a letter but had complied with the order given to him. He repeated his allegations that the investigators had threatened to send him to another detention facility where he would be placed in a cell with violent detainees. Furthermore, he argued that a person placed in his cell had threatened him with a knife and demanded that he plead guilty.

47. On 28 October 2008 the Court of Appeal partly overturned the first-instance court's judgment: the applicant was acquitted of murder in a cruel manner and of theft, but his conviction of murder in a torturous manner was upheld, although the Court of Appeal modified the County Court's reasoning in this respect.

48. The Court of Appeal, referring to the Code of Criminal Procedure and to the Supreme Court's case-law, noted that the defendant's statements given at a court hearing were to be decisive. In the event that those statements contradicted those given during the pre-trial investigation and there was no explanation for the contradictions, a court could wholly disregard the defendant's statements but could not choose to base its judgment on the statements given in the pre-trial investigation. The Court of Appeal found that in the present case, the County Court had extensively relied on reports and records drawn up in the preliminary investigation and noted that a video recording of one of the police interviews of the applicant had been shown at the County Court hearing. The Court of Appeal considered that that had breached the rules of procedure and, accordingly, all the statements made by the applicant during the pre-trial proceedings had to be disregarded. However, the Court of Appeal found that the applicant's conviction was nevertheless safe. It stated:

> "9. In order to commence the assessment of [the applicant's] immediate connection with the murder of [J.], one has to base oneself on the following situation, put briefly. The body of [J.] is found in a forest; it becomes evident that several of his belongings are missing. In the course of the proceedings it is established that [the applicant] was the last person to call [J.]. A car was also seen at the scene and its passengers are initially associated with the murder; as a result of a thorough investigation, first, the persons who were in the car are identified and then, it is established that those persons had no connection whatsoever with the murder. At the same time [and] in parallel, proceedings were carried out in respect of [the applicant] who, at a certain point in time, confessed to having committed the murder, but during the trial in court he abandoned that [position]. Although the Court of Appeal has ruled that the statements made in the pre-trial proceedings had to be excluded from the body of evidence, there is nothing to prevent the use of such general knowledge; the confession of murder was to a large extent the reason why [the applicant] was committed to trial charged with murder, and the investigations were carried out on the basis of that knowledge. Even

> the defendant himself did not deny at the Court of Appeal hearing that he had earlier confessed to committing the murder; it is the question of further proceedings and the assessment of the evidence as a whole, whether or not [the applicant's] statements given in court and his version of the events were to be considered truthful and what evidence directly refers to [the applicant] as the author of the offence, regardless of the setting aside of the statements made during the pre-trial proceedings."

49. The Court of Appeal proceeded to demonstrate through detailed analysis that the applicant's statements given at the court hearing were incoherent and contradicted other admissible evidence (the factual circumstances, expert opinions, crime scene inspection reports, witness statements and so on). The Court of Appeal also relied on the letter that the applicant wrote to his father from the detention facility. It thoroughly analysed the letter and found it implausible that it had been written under duress or that it had been intended that it be seized by the authorities. The Court of Appeal noted that the defence had not requested that J.R., the applicant's cellmate who had allegedly pressurised him, be summoned to the court.

50. The Court of Appeal partly agreed with the applicant's complaint of an infringement of his defence rights during the pre-trial proceedings. It noted that under the Code of Criminal Procedure, defence counsel's participation in the whole proceedings was absolutely mandatory if the offence was committed by a minor, as in the instant case. However, in the present case the applicant had been questioned twice during the pre-trial proceedings without his counsel being present. Nevertheless, the Court of Appeal found that, as the statements made in the pre-trial proceedings were wholly out of the scope of material that could be considered by the trial court, any negative consequences of a possible violation of the applicant's defence rights could not have materialised in the present case.

51. On 5 January 2009 the Supreme Court declined to hear an appeal lodged by the applicant.

II. RELEVANT DOMESTIC LAW

52. Article 45 § 2 (1) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) provides that the participation of counsel throughout criminal proceeding is mandatory if at the time of commission of the criminal offence, the person concerned was a minor.

53. Article 54 of the Code of Criminal Procedure provides that a person shall not act as counsel if he or she, in the same or related criminal case, has previously defended or represented another person whose interests are in conflict with the interests of the person to be defended. If counsel does not withdraw himself or herself, the court shall remove counsel on its own initiative or at the request of a party to the proceedings (Article 55).

54. Article 366 (7) of the Code of Criminal Procedure provides that criminal proceedings may be reopened if the European Court of Human Rights has found a violation of the European Convention on Human Rights which may have affected the outcome of the criminal proceedings and if it cannot be resolved or if damage caused thereby cannot be compensated in a manner other than by reopening the proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

55. The applicant complained that his defence rights had been violated as his appointed lawyer had been denied access to him during the pre-trial proceedings, whereas his conviction had been based on evidence obtained in those proceedings. He relied on Article 6 §§ 1 and 3 (c) of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (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;
>
> ..."

56. The Government contested that argument.

A. Admissibility

1. The parties' submissions

57. The Government noted that the last domestic decision had been taken by the Supreme Court on 5 January 2009. Regardless of the fact that the application had been dated 28 June 2009, it was very unlikely that it had been posted more than five days prior to its receipt by the Court on 13 July

2009. The posting of the application on 8 July 2009 would have been in violation of the six-month time-limit.

58. The Government further argued that the applicant's counsel, Mr Järve, was seeking to defend his own civil rights rather than the rights of the applicant. Replacement of the applicant's counsel had taken place at the applicant's own request and it had been established that no coercion whatsoever had been used. The case file contained nothing to indicate that the applicant had made any complaints about having not been allowed to meet or communicate with Mr Järve or any complaints concerning other counsel. Mr Järve's complaints did not fall under the protection of the Convention and the Government called on the Court to declare the application inadmissible *ratione materiae* or as being manifestly ill-founded.

59. The Government also argued that domestic remedies had not been exhausted. By its decision of 3 October 2006, the Board of the Bar Association had found that counsel R. had not violated the requirements of professional ethics. No appeal against that decision or complaints to the Court of Honour of the Bar Association in respect of the activities of counsel or their appointment had been made.

60. The applicant contended that the six-month time-limit had been complied with. He submitted copies of a fax transmission report and a postal receipt demonstrating that the application had been both faxed and posted on 4 July 2009.

61. The applicant further referred to his appeal and statements in court alleging that a police investigator had told him to write a request to terminate Mr Järve's services as counsel. In the court proceedings, after Mr Järve had again been allowed to defend him, the applicant had been assisted by Mr Järve.

62. The applicant submitted that R. had only become involved in the proceedings because the State had allowed the rules of procedure to be disregarded. Complaining to the Bar Association in respect of R. would not have altered those breaches of the rules of procedure that had taken place while he was being represented by R.

2. The Court's assessment

63. In respect of the question whether the six-month rule (Article 35 § 1) has been complied with, the Court notes that the fax transmission reports, postal receipt and postmark on the envelope contained in the case file indicate that the application was indeed sent by fax and posted on 4 July 2009. Therefore, the Government's objection has to be rejected.

64. The Court further notes that Mr Järve has been duly authorised by the applicant to act as his representative in the proceedings before the Court. Thus, the complaints made by him are to be deemed to have been made on the applicant's behalf. Furthermore, the Court considers that when a person

is kept in custody and no meetings with the lawyer authorised to assist him take place, it is only a difference of perspective whether the situation is described as counsel not having access to the suspect or the suspect not having access to counsel. Therefore, the Court does not agree that the application has been lodged in the interests of Mr Järve rather than the applicant. This objection has to be dismissed.

65. The Court further considers that the crux of the applicant's complaint is not the activities of R., but rather the question whether the applicant's rights were violated by the authorities' allegedly obstructing his meetings with Mr Järve as counsel of the applicant's and/or his parents' choice. The Court considers that this complaint was sufficiently raised before the authorities and therefore the Government's plea of non-exhaustion has to be dismissed.

66. The Court notes that this complaint 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

(a) The applicant

67. The applicant argued that his defence rights had been violated and he had not been given a fair trial. He submitted that Mr Järve, counsel chosen by his parents, had been denied access to him during the pre-trial proceedings. He had had no means or knowledge of hiring counsel; an agreement with counsel had been signed by his parents. The applicant argued that he had been pressurised by police investigators to write a request for terminating Mr Järve's services as counsel. He had been told that Mr Järve had not been available, which had not been true. The fact that Mr Järve had been defending two other suspects in the case was irrelevant. In the event that an investigator had found that there was a conflict of interests, the procedure for the removal of Mr Järve should have been initiated. However, that had not been done as there had been no grounds for it.

68. Furthermore, the argument that the applicant had not wished to meet Mr Järve was without substance. The police investigator had been unable to show Mr Järve the applicant's request. Moreover, the applicant had later wished to be defended by Mr Järve. The applicant's parents had hired G., another counsel, not because the applicant had not wanted to be defended by Mr Järve, but because of the obstacles placed in Mr Järve's way in carrying

out his functions as counsel. A defendant has the right to several counsel; in the present case, however, the applicant's parents had been obliged to hire one more counsel because the first one had been prevented from performing his functions.

69. The applicant asserted that he had been pressurised to agree to be represented by R., counsel chosen by the investigative authorities under the legal-aid scheme, who had acted in the interests of the authorities rather than those of the applicant. Under pressure exerted by both the authorities and the legal-aid lawyer, the applicant had confessed to the offence. Violent cellmates had also hinted that it was useful to cooperate with the investigators. The applicant had denied the charges in court. However, although the Court of Appeal had ruled that the County Court could not rely on evidence obtained from the applicant in the pre-trial proceedings, the Court of Appeal had itself relied on that "general knowledge" and referred to the applicant's admission of guilt before the trial.

(b) The Government

70. The Government emphasised at the outset that it was not correct to raise the question whether the applicant had been able to defend himself through the legal assistance of his parents' choosing, because as an adult, the applicant had the right to choose his own lawyer.

71. The Government considered that the applicant's defence rights had been guaranteed and he had been given a fair trial. They pointed out that the applicant had initially benefited from the assistance of R. as his legal-aid counsel. The applicant's parents had then arranged for Mr Järve to be his contractual counsel. As Mr Järve had also been defending two other suspects in the same criminal case, the applicant had waived his services, since he had realised that such a situation was not in his interest. The applicant had expressed his wish to terminate Mr Järve's services as counsel in writing and orally to several people. Thereafter, R. had been reappointed as his legal-aid counsel. Subsequently, the applicant's parents had arranged for G. to take over the function of contractual counsel. The Government considered that the above explanation clearly showed that as the applicant's parents had wanted their son to be defended by contractual counsel and, as they had accepted his wish that that counsel not be Mr Järve, they had concluded a new client agreement with another contractual counsel. The applicant had again accepted Mr Järve as counsel after the criminal proceedings in respect of his other clients had been discontinued.

72. The Government pointed out that both contractual counsel had entered the proceedings on the initiative of the applicant's parents. Their participation had been guaranteed when the applicant had wanted them to participate. During the other periods the applicant's defence had been secured by legal-aid counsel. The Government considered that the authorities could not have prohibited the applicant from waiving the

services of counsel chosen by his parents, as that would have been contrary to the right of defence guaranteed under the Convention.

73. The Government contended that the participation of different counsel had not affected the applicant's right of defence or the defence tactics. The applicant had confessed his guilt during the participation of both counsel R. and Mr Järve (on 7 and 10 August 2006 and 20 December 2006) as well as without counsel (on 1 and 11 December 2006). The applicant had also denied his guilt in the presence of all counsel (on 19 July 2006 when assisted by R.; on 28 August 2008 when assisted by G.; and during the court proceedings when assisted by Mr Järve).

74. The Government emphasised that during the criminal proceedings the applicant had made no complaints against counsel R. or G. Nor had he made any complaints against the investigators or the prosecutors. The Government considered that the complaint to the Court of Human Rights concerned the claims by Mr Järve that he had not been allowed to defend the applicant. The Government argued that such claims were in contradiction with the applicant's claims and called on the Court to resolve the matter on the basis of the statements made by the applicant.

75. In the Government's submission it had been unequivocally clear that the applicant had not wanted Mr Järve to continue as his counsel and had not wished to notify him personally of his decision. The reason for that – a possible conflict of interests – was clear and logical. Regarding the authorities' refusal to allow Mr Järve to meet the applicant in order to personally ascertain his real wish, the Government noted that counsel was not entitled to demand a meeting with a person who had terminated his services. The authorities could not force the applicant to meet Mr Järve, whom he no longer considered as counsel. The Government pointed out that neither R. nor G. had claimed that they had been prevented from meeting with the applicant.

76. The Government concluded that the applicant had been given a fair trial. In addition to the complaints made in separate proceedings, the complaints about the alleged violation of the applicant's rights of defence had been raised in the main proceedings before the courts at three levels of jurisdiction. Furthermore, the Tallinn Court of Appeal had excluded all the applicant's statements made during the pre-trial investigation from the body of evidence. That evidence had not been taken into consideration in reaching the judgment.

2. The Court's assessment

(a) General principles

77. The Court reiterates that, although the primary purpose of Article 6, as far as criminal proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow

that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 – may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Salduz v. Turkey* [GC], no. 36391/02, § 50, ECHR 2008; *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-IV; and *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275).

78. The Court further reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Salduz*, cited above, § 51; *Demebukov v. Bulgaria*, no. 68020/01, § 50, 28 February 2008; and *Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A).

79. The Court has consistently viewed early access to a lawyer as a procedural guarantee of the privilege against self-incrimination and a fundamental safeguard against ill-treatment, noting the particular vulnerability of an accused at the early stages of the proceedings, when he is confronted with both the stress of the situation and the increasingly complex criminal legislation involved. Any exception to the enjoyment of this right should be clearly circumscribed and its application strictly limited in time. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies (see *Salduz*, cited above, § 54, and *Leonid Lazarenko*, no. 22313/04, § 50, 28 October 2010, § 50).

80. The afore-mentioned principles of the right to defence and the privilege against self-incrimination are generally recognised international human rights standards, which are at the core of the concept of a fair trial. Their rationale relates in particular to the protection of the accused against abusive coercion on the part of the authorities. They also contribute to the prevention of miscarriages of justice and to the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused (see *Salduz*, cited above, § 53; *Bykov v. Russia* [GC], no. 4378/02, § 92, with further references; *Pishchalnikov v. Russia*, no. 7025/04, § 68, 24 September 2009; and *Leonid Lazarenko*, cited above, § 51). The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-IX, with further references).

81. Lastly, the Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, for example, *Jalloh*, cited above, § 94). While Article 6 of

the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national legislation and the domestic courts (see, amongst others, *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

(b) Application of the above principles in the instant case

82. The Court observes that the applicant's main complaints can be set out as follows: counsel of the applicant's own choosing was denied access to him and he was pressurised to terminate his services; the legal-aid lawyer served the interests of the authorities rather than those of the applicant; the applicant's conviction was based on the evidence obtained in the pre-trial proceedings with the violation of his defence rights; and even though the Court of Appeal declared that evidence to be inadmissible, it had still relied on it.

83. The Court notes that there is no dispute between the parties as to the fact that Mr Järve, counsel of the applicant's own choosing, could not gain access to the applicant on 7 August 2006 and during the months to follow. According to the Government, the applicant had terminated Mr Järve's services of his own volition. The applicant alleged that the investigators had pressurised him to write the waiver requests against his will.

84. The Court notes that the documents in the case file contain the following information about the termination of the services of Mr Järve. As concerns the applicant's waivers, there are two differently worded texts dated 7 August 2006 in which the applicant waived the services of Mr Järve and stated that he wished instead to be defended by legal-aid counsel R. (see paragraph 15 above). The case file also contains a police investigator's order dated 7 August 2006 whereby the applicant was granted legal aid and R. was appointed as his counsel (see paragraph 16 above), and a legal-aid application form, which was filled out on 8 August 2006 by the applicant, confirming that he wanted R. to act as his legal-aid counsel (see paragraph 19 above).

85. Furthermore, in his explanation to the Board of the Bar Association, R. submitted that on 7 August 2006 the applicant had told him that he wanted to terminate the services of Mr Järve as counsel because Mr Järve was also defending other suspects in the case (see paragraph 29 above). That explanation is in line with the information provided in the decision of the State Prosecutor's Office in response to Mr Järve's complaint, which stated that it had been explained to the applicant that there was a contradiction between his statements and those of the other suspects, and the question had arisen whether Mr Järve could properly act as the applicant's counsel. The applicant had then decided to continue with R. as counsel (see paragraph 30 above). According to Mr Järve, G. (the applicant's second

privately hired counsel) had told him that the applicant would have wanted Mr Järve to continue as his counsel but had been told that Mr Järve had not been available (see paragraph 36 above). Lastly, the applicant also submitted during the domestic court proceedings that an investigator had instructed him to write the waivers (see paragraph 46 above).

86. The Court has taken note of the Government's view that the applicant, as an adult, had the right to choose his counsel, and the right to terminate the services of counsel hired by his parents, and that the authorities could not be blamed for not having forced him to meet the lawyer whom he had said he did not wish to see. Indeed, the applicant's parents clearly wanted him to be defended by privately hired counsel; when the applicant terminated the services of Mr Järve as counsel because he wanted a lawyer who was not defending other suspects, his parents hired another lawyer. In the meantime, the applicant was assisted by R., who had also been his initial legal-aid counsel. Subsequently, as the suspicions in respect of the other suspects were dropped, there were no obstacles to Mr Järve's resumption as counsel. The Court notes in this context that no complaints in respect of counsel R.'s performance were made by the applicant and there is no information that he sought to make complaints through R., or subsequently through G., about any pressure exerted by the investigators, either in the context of the termination of Mr Järve's services or his confession to the murder. The Court also notes that no allegations about the applicant's ill-treatment have ever been raised.

87. At the same time, the Court has also taken note of the applicant's submissions that he was pressurised by the investigators to be represented by R. and to confess to the offence. It was noted in Mr Järve's complaint to the prosecutor that, according to the applicant, the investigators had told him that he would be handcuffed, taken to the crime scene and made to confess to the murder (see paragraph 23 above). At the court hearing and in the appeal, the applicant submitted that the investigators had told him that he would be taken to another detention facility and placed in a cell with violent detainees (see paragraphs 42 and 46 above). He also argued that a cellmate had pressurised him to write a letter to his parents (see paragraph 42 above) and even threatened him with a knife and demanded that he plead guilty (see paragraph 46 above).

88. The Court considers that the circumstances in which the applicant terminated Mr Järve's services are not entirely clear. It is in fact hard to explain why the applicant terminated the services of Mr Järve as counsel on Monday 7 August 2006, after they had agreed on Friday 4 August 2006 that Mr Järve would visit him on Monday – which he indeed attempted to do.

89. The Court also notes that one of the waivers dated 7 August 2006 has been subject to different interpretations. Its wording (see the text of the second waiver in paragraph 15 above) appears to refer to the offence committed by the applicant; at the same time, it follows from counsel R.'s

explanations to the Board of the Bar Association that the applicant had not wanted Mr Järve to be informed about the termination of his services (see paragraph 29 above). Regardless of the interpretation to be attributed to the text of the waiver, the fact remains that Mr Järve was not informed of the termination of his services and was unable to ascertain whether it had been of the applicant's own volition.

90. Although the applicant has not submitted evidence such as copies of the visitors' logbook of the detention facility to substantiate his allegations about the pressure exerted on him by the investigators (compare *Pavlenko v. Russia*, no. 42371/02, § 111, 1 April 2010), it can be concluded from the official documents that certain unrecorded discussions between the applicant and the investigators must have taken place in the absence of counsel, in which it was "explained" to the applicant that it would be reasonable to terminate the services of Mr Järve as counsel (see paragraph 30 above). While it is true that the right to be defended by counsel of one's own choosing is not an absolute one and the defendant's wishes can be overridden when there are relevant and sufficient grounds for holding this necessary in the interests of justice (see *Croissant v. Germany*, 25 September 1992, § 29, Series A no. 237-B), the Court notes that in the present case, even if Mr Järve's presumed conflict of interests would have served as grounds for replacing him, no use was made of the formal procedure for removal of counsel applicable in the event of a conflict of interests and provided for in Articles 54 and 55 of the Code of Criminal Procedure (see paragraph 53 above). In such procedure, counsel could have presented his position and made sure that no pressure had been exerted on the applicant and a court would have independently and impartially examined the matter and ruled on whether or not counsel was to be removed owing to a conflict of interests. Any procedures used and decisions taken could also have been properly documented in such an instance so as to avoid any doubts raised about undue pressure. The Court considers that reliance, instead, on an informal practice, as happened in the present case, gives rise to concern about the respect of the applicant's rights of defence and freedom from self-incrimination (in respect of unrecorded discussions or informal questioning, see also, for comparison, *Titarenko v. Ukraine*, no. 31720/02, § 87, 20 September 2012, and *Pavlenko*, loc. cit.). Moreover, the Court notes that in the present case legal-aid counsel was not chosen by the Bar Association but rather by the police investigator.

91. The Court further notes, in this connection, that the haste with which the procedural measures were carried out on 7 August 2006 is unexplained. It appears that the investigation proceeded immediately after the applicant had terminated Mr Järve's services: his interrogation started at 8.05 p.m. and the subsequent crime scene reconstruction lasted until almost midnight (see paragraph 17 above). Against that background, the applicant's

allegation about pressure exerted by the investigator does not appear misplaced.

92. The Court considers it of relevance that the applicant was seventeen years old at the time of the commission of the murder. In its case-law on Article 6 the Court has held that when criminal charges are brought against a child, it is essential that he be dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (see *Panovits v. Cyprus*, no. 4268/04, § 67, 11 December 2008, and *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999, § 84). The right of an accused minor to effective participation in his criminal trial requires that the authorities deal with him with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition (see, *Panovits*, loc. cit., and, *mutatis mutandis*, *T. v. the United Kingdom*, cited above, § 85) and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent (see, *Panovits*, loc. cit., and, *mutatis mutandis*, *S.C. v. the United Kingdom*, no. 60958/00, § 29, ECHR 2004-IV). Although in the present case the applicant reached the age of eighteen three weeks before his arrest, the Court considers that the reasons for which the special treatment of minors is required – such as the person's level of maturity and intellectual and emotional capacities – do not cease immediately once the legal age is reached. Therefore, the considerations based on those factors could maintain some of their relevance, although their importance decreased as time passed. This approach was acquiesced by the Estonian law according to which the participation of counsel throughout criminal proceeding was mandatory if at the time of commission of the criminal offence the person concerned was a minor (see paragraph 52 above), even if that person during the subsequent proceedings reached the legal age.

93. Based on the above elements, in particular the authorities' failure to make use of the formal procedure for the removal of counsel in case there were doubts about a conflict of interests on his part and their reliance, instead, on informal talks with the applicant, the applicant's young age as well as his apparent instability, which prompted his subsequent psychiatric and psychological expert examination on two occasions, and also the seriousness of the charges, the Court is not satisfied that the applicant's wish to replace counsel of his own (his parents') choosing could be considered genuine in the circumstances of the present case. It considers that there was an infringement of the applicant's right to defend himself

through legal assistance of his own choosing. Having made that finding, the Court considers it unnecessary to further deal with the issue that at a later stage of the pre-trial proceedings the applicant was interrogated twice without the presence of counsel.

94. The Court recalls in this connection that the guarantees in paragraph 3 (c) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision, which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, *mutatis mutandis*, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011, and *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, both with further references). The Court has also had regard to the subsequent use of statements made by the applicant during the preliminary investigation in breach of his defence rights. The Court notes that there is no dispute that that evidence was used against the applicant by the County Court. The Court of Appeal, having found that the County Court had unduly relied on the applicant's pre-trial statements, excluded all such statements from the body of evidence. However, on the basis of an analysis of the remaining evidence it found that the applicant's conviction was nevertheless safe.

95. The Court notes in this context that, despite excluding the applicant's pre-trial statements, the Court of Appeal considered that there was nothing to prevent the use of such "general knowledge". It went on to observe that the confession of murder had to a large extent been the reason why the applicant had been committed to trial with a murder charge, and the investigative measures had been carried out on the basis of that knowledge (see paragraph 48 above).

96. The Court considers that the exclusion of the pre-trial statements from the body of evidence reveals the importance that the Court of Appeal attaches to securing a suspect's defence rights from the early stages of the proceedings. Although tainted evidence as such can be left aside in the subsequent proceedings, in the present case the Court of Appeal's decision nevertheless demonstrated that the consequences of the breach of defence rights had not been totally undone.

97. In the light of the above considerations, the Court concludes that the applicant's defence rights were irretrievably prejudiced owing to his inability to defend himself through legal assistance of his own choosing.

It follows that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. The applicant further complained that the charges against him and the judgments of the courts had been too general and that the judgments

lacked sufficient reasoning and failed to properly address the arguments of the defence. In addition to Article 6 §§ 1 and 3, he also relied on Article 6 § 2 and Articles 13 and 17 of the Convention.

99. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the provisions invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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."

101. The Government argued that the applicant could make his claims for damages and legal expenses before the domestic judicial authorities in the event that his criminal case was reopened subsequent to the Court's finding a violation of his rights guaranteed under the Convention. In the alternative, the applicant could claim compensation for damage under the State Liability Act (*Riigivastutuse seadus*).

102. The Court has already held that if a victim, after exhausting the domestic remedies in vain before complaining to the Convention institutions of a violation of his rights, were obliged to do so a second time before being able to obtain just satisfaction from the Court, the total length of the procedure instituted by the Convention would scarcely be in keeping with the idea of the effective protection of human rights. Such a requirement would lead to a situation incompatible with the aim and object of the Convention (see *Oğur v. Turkey* [GC], no. 21594/93, § 98, ECHR 1999-III, and *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14).

103. The Court therefore considers that it is required to rule on the applicant's claim for just satisfaction.

A. Damage

104. The applicant claimed a reasonable amount in compensation for non-pecuniary damage.

105. The Government considered that the claim was unspecified and unsubstantiated, and called on the Court to reject it.

106. Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which

cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant 4,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

107. Furthermore, the Court notes that where an individual has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, as in the instant case, a retrial, a reopening or a review of the case, if requested by the applicant, represents in principle an appropriate way of redressing the violation (see Article 366 (7) of the Code of Criminal Procedure, summarised in paragraph 54 above; see also, for example, *Goldmann and Szénászky v. Hungary*, no. 17604/05, § 33, 30 November 2010, and *Vusić v. Croatia*, no. 48101/07, § 58, 1 July 2010).

B. Costs and expenses

108. The applicant claimed EUR 2,700.78 for legal expenses incurred before the domestic proceedings and EUR 120.76 for translation costs related to the proceedings before the Court. He submitted the pertinent invoices. He also recalled that he had claimed reimbursement of legal fees related to the lodging of the application with the Court in his initial application to the Court. This claim was not supported by any documents.

109. The Government considered that the legal expenses had been incurred only in the domestic proceedings and should not be awarded by the Court. Nor had the legal services rendered been specified, so their relevance and reasonableness could not be evaluated.

110. 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. This may include domestic legal costs actually and necessarily incurred to prevent or redress the breach of the Convention (see, for example, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 58, 27 February 2007, and *King v. the United Kingdom*, no. 13881/02, §§ 52-53 16 November 2004).

111. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,821.54, covering costs under all heads, plus any tax that may be chargeable to him.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged violation of the applicant's defence rights admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,821.54 (two thousand eight hundred and twenty-one euros fifty-four cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President