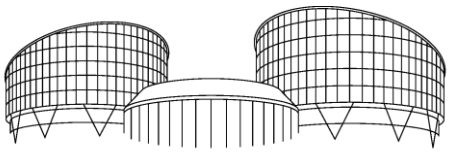

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DVORSKI v. CROATIA

(Application no. 25703/11)

JUDGMENT

STRASBOURG

28 November 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dvorski v. Croatia,

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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 25703/11) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Ivan Dvorski ("the applicant"), on 16 April 2011.

2. The applicant was represented by Ms S. Maroševac Čapko, a lawyer practising in Rijeka. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant in particular alleged that his right to a fair trial including the right to legal assistance of his own choosing and his right not to incriminate himself, under Article 6 §§ 1 and 3 (c) of the Convention, had been violated.

4. On 28 June 2011 the applicant's complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1986 and lives in Rijeka.

6. On 13 March 2007 between 2 and 3.30 a.m. in Vežica, a residential neighbourhood of Rijeka, three murders, an armed robbery and an arson attack were committed.

7. During the same day, a number of people from Vežica were brought in for questioning at the Rijeka Third Police Station of the Primorsko-Goranska Police Department (*Policijska uprava Primorsko-goranska, Treća policijska postaja Rijeka*; hereinafter "Rijeka Police Station").

8. Around 1.00 p.m. the same day, the applicant was brought to the Rijeka Police Station for an interview. Blood samples were taken from him for DNA analysis and the police searched his flat and mobile phone and seized a number of his personal items.

9. The applicant was kept at Rijeka Police Station until his arrest on 14 March 2007 at 9.50 a.m. in connection with the above offences.

10. According to the applicant, from the moment he was brought to Rijeka Police Station, he was put in a windowless cell with no light and kept without food and water until about 6 p.m. on 14 March 2007.

11. According to the Government, the applicant had been kept in a detention room, although he had spent most of the time in an interview room. The detention room had been under video surveillance. In the interview room the applicant had been under the constant guard of a police officer and therefore could have asked for food or drink or to go to the toilet at any time. The detention room had been equipped with sanitary facilities and artificial light, but it had also had a window which had been secured with metal bars. There had also been a bed and a number of blankets to ensure rest. The applicant had been provided with hot meals and drinks and the Government submitted receipts for orders made in that respect.

12. Meanwhile, on 14 March 2007 the applicant's parents hired a lawyer, G.M., to represent the applicant. However, the police denied him access to the applicant (see paragraph 21 below).

13. On the same date at 6 p.m. the applicant agreed to be represented by a lawyer, M.R. who arrived at Rijeka Police Station at around 7.45 p.m. The questioning of the applicant began at 8.10 p.m. According to the record of the applicant's questioning, the police warned him of his right not to incriminate himself and to remain silent and he expressly stated that his lawyer was M.R.

14. In the presence of M.R., three police officers and the Rijeka County State Attorney (*Županijski državni odvjetnik u Rijeci*), the applicant confessed that he had, together with L.O. and R.L.J., gone to Đ.V.'s flat in Vežica on the night of 13 March 2007, where he had taken a certain amount of money from Đ.V. and had then shot and killed him, his girlfriend and his father, after which he had set their flat on fire in order to destroy any trace of him having been there. He also stated that he had promised L.O. and R.LJ. that he would confess to the crimes and take the blame on him if they would be arrested. The applicant further stated that he had confessed to the crimes of his own free will and that he had not been under any form of pressure or coercion. By signing the record of the statement he also attested that he had been warned of his right not to incriminate himself. The

questioning of the applicant ended at 11 p.m., with a short break in between in which the applicant had used the toilet.

15. The lawyer hired by the applicant's parents, G.M., lodged an action in the Rijeka County Court (*Županijski sud u Rijeci*) on 15 March 2007 asking that he be allowed to contact the applicant.

16. On 15 March 2007 the Rijeka Police lodged a criminal complaint against the applicant and L.O. and R.L.J. with the Rijeka County State Attorney's Office (*Županijsko državno odvjetništvo u Rijeci*) concerning the above-mentioned three murders, armed robbery, and arson.

17. On the same date, the applicant was brought before an investigating judge of the Rijeka County Court. When asked by the investigating judge whether his lawyer was M.R., who had been present during his police questioning, or G.M., who had a power of attorney signed by the applicant's parents, the applicant stated that he was revoking the power of attorney to M.R. and granting it to G.M. by signing it himself.

18. During questioning before the investigating judge the applicant complained that he had never hired M.R. and that he had expressly asked the police officers to call lawyer G.M. However, he had never been informed that G.M. had come to the police station. He also complained that he had been deprived of food until after he had given his statement and that during arrest he had been under the influence of drugs and alcohol.

19. On 16 March 2007 the Rijeka County State Attorney's Office asked the investigating judge of the Rijeka County Court to open an investigation against the applicant, L.O. and R.L.J., on the suspicion that on 13 March 2007 they had committed three aggravated murders and arson in Vežica.

20. The investigating judge again heard the applicant on 16 March 2007 in the presence of G.M. The applicant remained silent and refused to answer any questions put to him by the investigating judge or the prosecution.

21. On the same date, G.M. lodged a request for disqualification of the Rijeka County State Attorney and all his Deputies with the investigating judge. The investigating judge forwarded the request to the Rijeka County State Attorney's Office. The relevant part of the request reads:

> "About thirty minutes ago the defence lawyer learned that the Rijeka County State Attorney, D.H., had been present during the questioning of Ivan Dvorski as a suspect by police officers of Rijeka Police Station on 14 March 2007 at around 7 p.m., and in presence of 'defence lawyer' M.R.
>
> On the same date at around 10.40 a.m. the mother of Ivan Dvorski, L.J.D., who lives and works in Italy, called [G.M.] and asked him to defend her son Ivan, who was suspected of the offence of aggravated murder. Around 10.45 a.m. the defence lawyer came to Rijeka Police Station but the police officers refused to let him see Ivan Dvorski and they also did not tell [Ivan Dvorski] that his mother had hired a lawyer. The defence lawyer stayed in Rijeka Police Station until 12.00 p.m. He wanted to file a criminal complaint against an unknown person for abuse of power and extracting a confession, but the police officers refused to take his complaint on the grounds that he had no power of attorney and pushed him out of the police station. The defence

lawyer immediately informed the Rijeka Deputy County State Attorneys, D.K. and I.B., about the incident and they made an official note in their case file.

Therefore, at around 12.30 p.m. the Rijeka State Attorney already knew that [G.M.] had been hired by [Ivan Dvorski's] mother and that he could not contact his client.

The [Rijeka] County Court was also immediately informed.

At around 1.30 p.m. Ivan Dvorski's father signed a power of attorney for the defence of his son. A legal trainee, B.P., [then] tried to submit this power of attorney to the police but was told to 'fuck off with that power of attorney' and therefore it was not submitted.

At around 3.00-3.30 p.m. defence lawyer [G.] M. again tried to contact his client in Rijeka Police Station but was denied access to him ... However, the defendant was never informed that a defence lawyer had been hired and that he had come to Rijeka Police Station.

Around 3.30 p.m. the defence lawyer informed the Chief of the Primorsko-Goranska Police Department ... Mr. V., who apparently made an official note concerning their conversation. However, the defendant was never informed that a defence lawyer had been hired and also never asked whether he wanted to be represented by the lawyer hired by his family.

Besides that, ever since he was brought to Rijeka Police Station [Ivan Dvorski] asked on a number of occasions that [G.M.] be called but was told by the police officers that they had tried but there had been no answer. When he was brought to the police station, blood samples were taken from the defendant. They show that he had a high level of alcohol and drugs in his blood.

Between 1.00 p.m. on 13 March 2007 and around 7.00 p.m. on 14 March 2007 (these time periods are only known to the defence lawyer from informal sources because he had no access to the Rijeka County State Attorney's case file) the defendant was never given any food.

It is clear that although all these facts were known to the Rijeka State Attorney, D.H., he disregarded them and, although personally present, allowed the defendant to be questioned in presence of a lawyer who had [neither been requested by him] nor [...] hired by his family. This amounts to extracting a confession contrary to Article 225 § 8 of the Code of Criminal Procedure. Namely, the Rijeka State Attorney, since about 12.30 p.m. [on 14 March 2007], knew who the defence lawyer was.

On the same date the defence lawyer sent the power of attorney to the Primorsko-Goranska Police Department and written complaints were also sent to the Supreme Court of the Republic of Croatia, the State Attorney General of the Republic of Croatia, the Rijeka County State Attorney's Office, the Croatian Bar Association, the Ministry of Justice, the Ministry of the Interior, the Chief of the Primorsko-Goranska Police Department and the Rijeka County Court. ..."

22. On 16 March 2007 an investigation was opened in respect of the applicant, L.O. and R.L.J. on the suspicion that on 13 March 2007 they had committed the three aggravated murders and arson in Vežica.

23. On 23 March 2007 the State Attorney General of the Republic of Croatia (*Glavni državni odvjetnik Republike Hrvatske*) dismissed G.M.'s request for disqualification of the Rijeka County State Attorney on the grounds that there were no reasons for his disqualification. On 26 March

2007 the Rijeka County State Attorney dismissed the request for disqualification of his Deputies on the same basis.

24. On 28 March 2007 G.M. informed the Rijeka County Court that he would no longer represent the applicant and on 30 March 2007 the President of the Rijeka County Court appointed a legal aid lawyer, S.M.Č., to represent the applicant.

25. During the investigation a number of witnesses were heard, and a report on the inspection of the crime scene and search and seizure, as well as medical, fire and ballistic expert reports, were obtained by the investigating judge.

26. On 12 July 2007 the Rijeka County State Attorney's Office indicted the applicant, L.O. and R.L.J. in the Rijeka County Court on three counts of aggravated murder and one count of arson committed on 13 March 2007 in Vežica.

27. The applicant, represented by lawyer S.M.Č., lodged an objection against the indictment with the Rijeka County Court on 24 July 2007 on the grounds that it had contained numerous substantive and procedural flaws. He also argued that he had given his statement to the police under the influence of alcohol and drugs.

28. The applicant's objection against the indictment was dismissed as ill-founded by a three-judge panel of the Rijeka County Court on 28 August 2007.

29. On 9 October 2007, the first day of the trial, the applicant and the other accused pleaded not guilty to all charges and the trial court heard evidence from seven witnesses.

30. Another hearing was held on 11 October 2007, at which the trial court examined video recordings of the crime scene investigation and the autopsy of the victims.

31. Further hearings were held on 12 November 2007 and 11 January 2008, at which the trial court heard evidence from nine witnesses.

32. At a hearing on 14 January 2008 two toxicological experts, a fingerprint expert, a ballistics expert and a DNA expert gave evidence. The defence made no objection in respect of their evidence. At the same hearing four other witnesses gave evidence.

33. At a hearing held on 15 January 2008 the trial court heard another toxicological expert and a pathologist, as well as thirteen other witnesses. The defence made no objections in respect of the evidence of the expert witnesses but asked the trial court to commission a psychiatric report concerning the applicant.

34. At the same hearing the defence lawyer asked that a handwriting expert's report be commissioned in respect of the applicant's signature on the record of his statement given to the police on 14 March 2007. She argued that the applicant had not signed any record during his questioning by the police.

35. The trial court considered for the time being not necessary to commission a psychiatric report and thus dismissed the applicant's request in that regard. However, it commissioned a handwriting expert's report in respect of the signature on the record of the applicant's statement given to the police.

36. On 23 January 2008 the handwriting expert submitted her report. She found that the applicant had signed the record of his statement given to the police on 14 March 2007.

37. Another hearing was held on 12 March 2008, at which a medical expert, fire expert witnesses and one other witness gave evidence. The handwriting expert also gave oral evidence confirming her previous findings. The applicant's lawyer challenged the veracity of these findings and motioned to have another report commissioned, but the motion was dismissed by the trial court. At the same hearing, the trial court commissioned a psychiatric report in respect of the applicant and the other accused.

38. On 2 April 2008 the applicant asked the Rijeka County Court to call lawyer G.M. as a witness in connection with the alleged unlawful extraction of his confession by the police. He pointed out that G.M. had not been allowed to see him while he had been in police custody and stated that he had been forced by the police officers to confess.

39. On 24 April 2008 the two psychiatric experts submitted their report to the Rijeka County Court. They found that the applicant suffered from borderline personality disorder and addictions to heroin and alcohol. However, they found no distinctive mental disorder or illness. They concluded that, even assuming that he had been intoxicated at the time when the murders had been committed, he had retained the mental capacity to understand the nature of his acts, although it had been diminished to a degree. As to his mental capacity concerning the charge of arson, they concluded that, at the time when the offence had been committed, the applicant had been able to understand the nature of his acts and to control his actions.

40. At a hearing on 26 June 2008 the psychiatric experts confirmed their findings and the parties made no objections to their evidence. The trial court also dismissed the applicant's request that lawyer G.M. be heard as a witness on the grounds that all relevant facts had already been established.

41. At the same hearing one of the accused, R.L.J., confirmed the course of the events as described by the applicant in his statement given to the police on 14 March 2007. R.L.J., however, claimed that he had not personally participated in the killings because he had panicked and had left the flat when he had heard fighting.

42. After R.L.J. gave his statement, the Deputy County State Attorney amended the indictment. The applicant was charged with three aggravated murders, armed robbery and arson, and L.O. and R.LJ. were charged with

armed robbery and aiding and abetting the perpetrator of an offence. The applicant and the other accused pleaded not guilty to the charges listed in the amended indictment.

43. On 27 June 2008 L.O. gave oral evidence confirming the course of the events as described by R.L.J. He stated that after the applicant had gotten into a fight with Đ.V., he had heard gunshots, after which he had panicked and had left the flat.

44. At the same hearing the parties made their closing arguments. The applicant's defence lawyer argued that it had not been proven that the applicant had committed the offences he was charged with. She pointed out, however, that if the trial court considered differently, then the applicant's confession to the police and his sincere regret had to be taken into consideration in sentencing him.

45. On 30 June 2008 the Rijeka County Court found the applicant guilty of the three charges of aggravated murder and of the charges of armed robbery and arson and sentenced him to forty years' imprisonment. The trial court firstly examined the applicant's confession against the confession of the other co-accused and found that his confession was essentially consistent with the evidence provided by his co-accused, L.O. and R.L.J. When finding the applicant guilty the trial court took into account his confession and examined it against the evidence from the case file.

46. The trial court in particular relied on the search and seizure records and the photographs depicting the accused L.O. holding the same type of handgun as was used for the murders. Based on the witness statements, and the recording of a nearby video surveillance, the trial court concluded that the applicant and the other co-accused had come to the flat of Đ.V. on the critical date. Furthermore, the ballistic reports and the crime scene reports indicated that the details of the statements of the applicant and his co-accused were accurate, and the course of the events was ascertained based on the fire, ballistic and toxicological reports and the DNA report. The trial court also found that the statements of the accused as to the manner in which the murders had been carried out were supported by the autopsy report, the evidence of the pathologist provided at the trial, the crime scene report and the witness statements about the gunshots that had been heard in the flat of Đ.V. Furthermore, as to the arson charges, the trial court examined the materials from the crime scene investigation and the evidence from the fire expert report, as well as medical records and damage reports submitted by the victims, and the statements of a number of residents in the building where the fire occurred.

47. As regards the request made by the defence to hear lawyer G.M. (see paragraphs 38 and 40 above), the Rijeka County Court noted:

> "The request made by the [Ivan Dvorski's] defence to hear lawyer G.M. as a witness ... was dismissed as irrelevant. Namely, the documents from the case file do not reveal that there was any extraction of a confession by the police, but only [a record of] the

> time that lawyer [M.]R. came [to the police station], whereupon the questioning of [Ivan Dvorski] in presence of the lawyer to whom he had signed a power of attorney started ... Nobody, including [Ivan Dvorski's] defence lawyer who was present during the police questioning – lawyer [M.]R., has alleged any extraction of a confession and there is no indication of that in the record of Ivan Dvorski's statement, [who] at the time [was] only a suspect."

48. The applicant lodged an appeal against the first-instance judgment with the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 6 November 2008. He complained, *inter alia*, that the conviction had been based on his confession to the police, which had not been given in presence of a lawyer of his own choosing, namely G.M., but in the presence of a lawyer, M.R., who had been offered to him by the police. The applicant also referred to the request for disqualification of the Rijeka County State Attorney and all his Deputies lodged by G.M. on 16 March 2007, highlighting the part of that request which stated that he had been denied food during his police detention.

49. On 8 April 2009 the Supreme Court dismissed the applicant's appeal as ill-founded. As regards his complaints concerning his statement given to the police, that court noted:

> "... The lawfulness of [the statement given to the police] was not put into doubt by the appellant's complaints that lawyer M.R. had not been his lawyer and that his lawyer had been G.M., who had been hired by his father and mother on the same day, nor was its lawfulness put into doubt by the complaints that the appellant had been denied food in the period between 1.00 p.m. on 13 March 2007 and 7.00 p.m. on 14 March 2007 until he had agreed to hire lawyer M.R., since according to the record of his arrest (pages ...) the appellant had been arrested at 9.50 a.m. on 14 March 2007 and lawyer M.R. had arrived [at the police station] at 6.45 p.m. on the same day."

50. The applicant lodged a further appeal against the appellate judgment with the Supreme Court on 14 September 2009 reiterating his previous arguments.

51. On 17 December 2009 the Supreme Court, acting as the court of final appeal, dismissed the applicant's appeal as ill-founded. That court stressed that the record of the applicant's statement suggested that the applicant had chosen lawyer M.R. to represent him during the police questioning and that lawyer M.R. had provided him adequate legal advice. The Supreme Court also noted that nothing in the case file indicated that the applicant had been ill-treated or forced to confess.

52. The applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 11 March 2010. He complained, *inter alia*, that he had been ill-treated during his police detention and that he had been forced to confess. He also complained that he had been denied the chance to have a lawyer of his own choosing conduct his defence.

53. On 16 September 2010 the Constitutional Court dismissed the applicant's constitutional complaint. The Constitutional Court, endorsing

the reasoning of the Supreme Court, noted that the proceedings as a whole had been fair and that there was no evidence in the case file that the applicant had been ill-treated during his police detention.

II. RELEVANT LAW

A. Domestic law

54. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010) read as follows:

Article 23

"No one shall be subjected to any form of ill-treatment ..."

Article 29

"In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.

In the case of suspicion of a criminal offence or criminal charges [being brought], the suspect, defendant or accused shall have the right:

...

- to defend himself in person or with the assistance of a defence lawyer of his own choosing, and if he does not have sufficient means to pay for legal assistance, to be given it free as provided by law,

..."

55. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/1997, 27/1998, 129/2000, 51/2001, 105/2004, 84/2005, 71/2006) provide:

AGGRAVATED MURDER

Article 91

"A sentence of imprisonment of not less than ten years or long-term imprisonment shall be imposed on anyone who:

...

6. murders another in order to commit or to cover up another criminal offence,

..."

ROBBERY

Article 218

"(1) Whoever, by use of force against a person or using threats of a direct attack on a person's life or limb, takes away movable property from another with intent to unlawfully appropriate it shall be punished by imprisonment for one to ten years.

(2) If the perpetrator commits the robbery as a member of a group or a criminal organisation, or if, during the robbery, a weapon or dangerous instrument is used, the perpetrator shall be punished by imprisonment for three to fifteen years."

ENDANGERING LIFE AND PROPERTY BY DANGEROUS ACT OR MEANS

Article 263

"(1) Whoever endangers the life or limb of others or property of considerable value by [setting a] fire ... shall be punished by imprisonment for six months to five years."

...

(3) If the criminal offences referred to in paragraphs 1 and 2 of this Article are committed at a place where a number of people are gathered ... the perpetrator shall be punished by imprisonment for one to eight years.

..."

AGGRAVATED CRIMINAL OFFENCES AGAINST PUBLIC SAFETY

Article 271

"(1) If by the criminal offence referred to in Article 263, paragraph 1 ... of this Code the serious bodily injury of another or extensive material damage was caused, the perpetrator shall be punished by imprisonment for one to eight years."

56. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002 and 62/2003) provide as follows:

Article 62

"(1) A defendant may be represented by a lawyer at any stage of the proceedings, as well as before their commencement when prescribed by this Act. ...

...

(4) The defendant's legal guardian, spouse or common-law spouse, linear blood relative, adoptive parent or adopted child, sibling or foster parent may hire a lawyer for the defendant, unless the defendant expressly refuses it.

...

(6) A defence lawyer must present his power of attorney to the authorities conducting the proceedings. The defendant may also grant a power of attorney to a lawyer orally before the authority conducting the proceedings, in which case it must be entered into the record."

Article 177

" ...

(5) In the course of the investigation the police authorities shall inform the suspect pursuant to Article 237 paragraph 2 of this Code. Upon the request of the suspect, the police authorities shall allow him to hire a lawyer and for that purpose they shall stop interviewing the suspect until the lawyer appears or at the latest three hours from the moment the suspect asked to appoint the lawyer. ... If the circumstances show that the chosen lawyer will not be able to appear within this period of time, the police authorities shall allow the suspect to appoint a lawyer from the list of lawyers on duty provided to the competent police authority by the county branches of the Croatian Bar Association ... If the suspect does not hire a lawyer or if the requested lawyer fails to appear within the time period provided, the police authorities may resume interviewing the suspect ... The State Attorney has the right to be present during the questioning. The record of [any] statement given by the defendant to the police authorities in presence of a lawyer may be used as evidence in the criminal proceedings.

..."

B. Relevant international law materials

Right of access to a lawyer of own choosing during police custody

(a) Council of Europe

Rules adopted by the Committee of Ministers

57. Rule 93 of the Standard Minimum Rules for the Treatment of Prisoners (Resolution (73)5 of the Committee of Ministers of the Council of Europe) provides: "An untried prisoner shall be entitled, as soon as he is imprisoned, to choose his legal representation ... and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him and to receive, confidential instructions. At his request, he shall be given all necessary facilities for this purpose. ... Interviews between the prisoner and his legal adviser may be within sight but not within hearing, either direct or indirect, of a police or institution official."

58. Furthermore, the recommendation of the Committee of Ministers to Member States of the Council of Europe on the European Prison Rules (Rec (2006)2), adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, in so far as relevant, reads as follows:

"*Legal advice*

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

...

> 23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security."

(b) United Nations

International Covenant on Civil and Political Rights

59. Article 14 § 3 (b) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence is to be entitled "[t]o have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicant complained that he had been ill-treated during his police detention. He relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Admissibility

1. The parties' arguments

61. The applicant submitted that between 1 p.m. on 13 March 2007 and 7 p.m. on 14 March 2007 he had been kept in police detention in a windowless cell with no light and without food and water and that the domestic authorities had failed to respond appropriately to his complaints in this respect.

62. The Government argued that the applicant had failed to exhaust domestic remedies in respect of his Article 3 complaints, as he had not brought a criminal complaint against the police officers or a civil action for damages against the State. They further argued that he had submitted his application to the Court outside the six-month time-limit, as his complaints concerned his police detention on 14 March 2007 and his application had been lodged with the Court on 16 April 2011.

63. In any event, the Government considered that the applicant had failed to substantiate his complaints of ill-treatment during his police detention. In this respect, the Government provided photographs of the detention facilities in Rijeka Police Station and service orders for food and drinks during the police operation in which the applicant had been arrested.

They pointed out that the photographs showed that the applicant had been kept in appropriate conditions with all necessary facilities and that the food service orders showed that food and drink had been given to the applicant during his police detention. The Government further submitted that only about twenty police officers had taken part in the police operation, while significant amounts of food had been ordered in the period of the applicant's arrest and detention.

2. The Court's assessment

64. The Court finds that it is not necessary to address all of the Government's objections, as the complaint under Article 3 of the Convention is in any event inadmissible for the following reasons.

65. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

66. According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III).

67. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Labita*, cited above, § 120).

68. Measures depriving a person of his liberty may often involve such an element. Nevertheless, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła*, cited above, §§ 93-94, and *Riviere v. France*, no. 33834/03, § 62, 11 July 2006).

69. Allegations of ill-treatment must be supported by appropriate evidence (see *Labita*, cited above, § 121). The Court has held on many occasions that in assessing evidence it has generally applied the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of

similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

70. The Court notes that there is no dispute between the parties that the applicant was placed in the detention facilities of Rijeka Police Station which are depicted on the photographs provided by the Government. These photographs show that the detention room is equipped with appropriate sanitary facilities and a bed, as well as an artificial light and a window allowing daylight to come into the room. There is no reason for the Court to consider that these facilities differed in any respect during the applicant's detention, and the Court does not consider that placing the applicant there when he was not being interrogated discloses any appearance of treatment contrary to Article 3 of the Convention.

71. As regards the applicant's complaints that he was not given food or water during police detention, the Court observes that the receipts for food and drink service orders provided by the Government show that on 13 March 2007 the police ordered seventy hot meals with the purpose of facilitating the investigation in the present case. On 14 March 2007, the day of the applicant's police detention, as well as that of two other co-suspects, an additional thirty-five hot meals and thirty-six soft drinks were ordered.

72. Whereas this does not necessary show that the applicant received any of the food or drink ordered, it does indicate that the number of hot meals ordered significantly exceeded the number required by the police officers themselves. In this respect it is also to be noted that none of the applicant's co-accused ever complained that they had been denied food or water during police detention. In these circumstances, the Court cannot consider the applicant's mere assertion that he was not given any food or water during police detention sufficiently substantiated.

73. Thus, as the applicant's submissions have not otherwise in any way substantiated his allegations of ill-treatment during the police questioning on 13 and 14 March 2007, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

74. The applicant complained that he had not had a fair trial. In support of his complaint the applicant argued that following his arrest he had not been allowed to be represented by a lawyer of his choice; that the services of the lawyer who had represented him had fallen short of the requirements of a good defence; that he had been questioned in a coercive environment; that he had been forced to incriminate himself without the benefit of legal advice from a lawyer of his own choosing and that his conviction was based on the statements made while unrepresented by the lawyer of his choice.

He relied on Article 6 §§ 1 and 3 (c) of the Convention, which, in so far as relevant, 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;
>
> ... "

A. Admissibility

1. The parties' submissions

75. The Government submitted that the power of attorney of 16 April 2011, which the applicant's representative had provided to the Court, had not been signed by the applicant. In their view, the applicant's signature on the power of attorney did not correspond to his actual signature. They also pointed out that during 2011 the applicant had neither met nor communicated with the lawyer representing him in the proceedings before the Court. The lawyer had, however, visited him in September 2010, but at that time the Constitutional Court had still not served its decision on the applicant so there had been no reason for him to sign a power of attorney to be represented in proceedings before the Court. Therefore, the Government requested that the application be struck out from the list of cases.

76. The applicant argued that he had given the power of attorney to his representative in September 2010. He had given her a power of attorney before the decision of the Constitutional Court had been served on him because, having in mind the public pressure that had been put on the authorities to secure a conviction in his case, he had expected that the Constitutional Court would dismiss his constitutional complaint. Since the prison in which he had been serving his prison sentence was some distance from Rijeka, where his lawyer had her office, they had arranged to take all necessary steps, including the power of attorney, for lodging an application with the Court in September 2010. The exact date on the power of attorney granted by him had been filled in later with the applicant's knowledge and consent. Besides that, he had been in constant contact with his representative – either through his mother, who had been visiting him regularly, or by telephone.

2. The Court's assessment

77. The Court reiterates at the outset that the representative of the applicant must produce a "power of attorney or a written authority to act" (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 52, ECHR 2012). Therefore, a simple written authority would be valid for the purposes of the proceedings before the Court, in so far as it has not been shown that it was made without the applicant's understanding and consent (see *Velikova v. Bulgaria*, no. 41488/98, § 50, ECHR 2000-VI).

78. Furthermore, neither the Convention nor the Rules of Court impose any specific requirements on the manner in which the form of authority must be drafted or require any form of certification of that document by any national authority. What is important for the Court is that the form of authority should clearly indicate that the applicant has entrusted his or her representation before the Court to a representative and that the representative has accepted that commission (see *Ryabov v. Russia*, no. 3896/04, §§ 40 and 43, 31 January 2008).

79. The Court notes in the present case that the power of attorney, dated 16 April 2011, included in the case file bears the applicant's name and is signed in handwriting. The Court is unable by mere observation, and in the absence of direct and convincing evidence to the contrary, to doubt that the signature on the power of attorney is the applicant's.

80. The Court also notes that the applicant provided detailed information concerning his contacts with his representative which do not appear unreasonable and unconvincing. Moreover, there is nothing in the case file that could call into question the lawyer's account or her exchange of information concerning the applicant with the Court (see *Hirsi Jamaa and Others*, cited above, § 55).

81. In these circumstances, the Court has no reason to doubt the validity of the power of attorney. Consequently, it rejects the Government's objection. The Court further considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

82. The applicant submitted that throughout his detention in Rijeka Police Station the lawyer hired by his parents, G.M., had been unable to contact him. G.M. had therefore filed numerous complaints with various domestic authorities, including a request for disqualification of the Rijeka State Attorney and all his Deputies, by which he had sought to cease that illegal situation. Instead, the police had only allowed lawyer M.R., notably

the former chief of the Primorsko-Goranska Police Department, to contact the applicant in order for the applicant to make a self-incriminating statement. Lawyer M.R. had been called by the police officers and not by the applicant as he had been a person whom the police officers could trust to make the applicant confess to the crimes he had been suspected of. The fact that lawyer M.R. had never asked the applicant to pay for legal representation proved that he had been cooperating with the police.

83. The representation of the applicant by M.R. had fallen short of the requirements of a good defence. They had only had twenty-five minutes to discuss the case, which had been disproportionate to the severity of the crimes the applicant had been accused of and the fact that he had been questioned for almost three hours. This, together with the fact that the applicant had been starved and kept in inhumane conditions and that he had been under the influence of drugs and alcohol, had made the applicant confess to the crimes. Furthermore, the applicant complained that the trial court had relied on his statement given to the police and dismissed his request to hear certain witnesses, including lawyer G.M., which would have allowed it to elucidate the circumstances of the applicant's questioning at the police station and the accusations held against him. Therefore, he had not had a fair trial.

84. The Government argued that the applicant had had the benefit of all the guarantees of a fair trial during the criminal proceedings against him and that the proceedings, taken as a whole, had been fair. Throughout the proceedings the applicant had been represented by a qualified lawyer and he had effectively participated at the trial having had every opportunity to question witnesses and to make all his comments. Furthermore, the applicant's case had been examined at three instances including the Constitutional Court. The first-instance judgment had been based on his confession but also on a number of other evidence from the case file. As to the applicant's right not to incriminate himself, the Government submitted that it had not been infringed in any respect, since he had confessed to the crimes of his own free will and conscience, after consulting a lawyer. In this respect they pointed out that the applicant had signed his statement by which he had expressly confirmed that he had not been coerced or pressured to make the statement. The circumstances of the case revealed that there had been no reason for the police officers to question his mental ability to understand the circumstances in which he had found himself and to make a fully conscience statement.

85. The applicant had been given sufficient time, according to the record of his questioning approximately two hours, in which to consult with his lawyer and had given his statement thereafter. Lawyer M.R. had been chosen by the applicant from a list of lawyers provided in every police station and the applicant had granted him a power of attorney. In the presence of that lawyer, he had given a statement to the police which had

been made without any pressure or coercion. The fact that the applicant had been represented by another lawyer in later stages of the proceedings was irrelevant to the fact that M.R. had been his chosen lawyer who had represented him in accordance with their agreement and defence strategy at that stage.

2. The Court's assessment

(a) General principles

86. The applicant alleged that he did not have a fair trial and complained of a violation of Article 6 §§ 1 and 3 (c). The Court first notes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings as set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A; *Benham v. the United Kingdom*, 10 June 1996, § 52, *Reports of Judgments and Decisions* 1996-III; *Krombach v. France*, no. 29731/96, § 82, ECHR 2001-II; *Kulikowski v. Poland*, no. 18353/03, § 55, 19 May 2009; *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010; *Zagorodniy v. Ukraine*, no. 27004/06, § 52, 24 November 2011; and *Neziraj v. Germany*, no. 30804/07, § 45, 8 November 2012).

87. In this context, the Court reiterates that Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial (see *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II). In particular, the accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the opportunity to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Luchaninova v. Ukraine*, no. 16347/02, § 62, 9 June 2011).

88. In order to exercise his right of defence, the accused should normally be allowed to effectively benefit from the assistance of a lawyer from the initial stages of the proceedings (see *Salduz v. Turkey* [GC], no. 36391/02, § 52, 27 November 2008). The right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental features of a fair trial (see *Krombach v. France*, cited above, § 89).

89. A person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 99, Series A no. 80; *Pakelli v. Germany*, 25 April 1983, § 31, Series A no. 64; and *Whitfield and Others v. the United Kingdom*, nos. 46387/99, 48906/99, 57410/00 and 57419/00, § 48, 12 April 2005). Notwithstanding the importance of a relationship of confidence between lawyer and client, this right cannot be considered to be absolute (see *Prehn*

v. Germany (dec.), no. 40451/06, 24 August 2010). The national authorities may override the defendant's wish relating to legal representation when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (see *Croissant v. Germany*, 25 September 1992, §§ 29 and 30, Series A no. 237-B, and *Pavlenko v. Russia*, no. 42371/02, § 98, 1 April 2010).

90. The Court further reiterates its established case-law according to which the State cannot normally be held responsible for the actions or decisions of an accused person's lawyer (see *Stanford v. the United Kingdom*, 23 February 1994, § 28, Series A no. 282-A) because the conduct of the defence is essentially a matter between the defendant and his counsel, whether appointed under a legal aid scheme or privately financed (see *Czekalla v. Portugal*, no. 38830/97, § 60, ECHR 2002-VIII; see also *Bogumil v. Portugal*, no. 35228/03, § 46, 7 October 2008). Nevertheless, in the case of a manifest failure by counsel appointed under the legal aid scheme, or in certain circumstances a privately paid lawyer, to provide effective representation, Article 6 § 3 (c) of the Convention requires the national authorities to intervene (see *Güveç v. Turkey*, no. 70337/01, §§ 130-131, ECHR 2009).

91. As regards the privilege against self-incrimination and the right to remain silent, the Court reiterates that these are generally recognised international standards which lie at the heart of a fair procedure. Their aim is to provide an accused person with protection against improper compulsion by the authorities and thus to avoid miscarriages of justice and secure the aims of Article 6 of the Convention. The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent and presupposes that the prosecution in a criminal case will seek to prove the case against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In examining whether a procedure has impaired the very essence of the privilege against self-incrimination, the Court must examine the nature and degree of any compulsion, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put (see *Bykov v. Russia* [GC], no. 4378/02, § 92, 10 March 2009).

92. The Court underlines the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (see *Salduz*, cited above, § 54). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure has tended to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task is, among other

things, to help to ensure that the right of an accused not to incriminate himself is respected (see *Pavlenko*, cited above, § 101).

(b) Application of these principles to the present case

93. The Court considers, in view of the applicant's complaints, that the central issue raised in this case is the applicant's right to retain counsel of his own choice; and whether as a result of not having that opportunity, he was prevailed upon in a coercive environment to incriminate himself without the benefit of effective legal advice.

94. The Court notes at the outset that the present case does not concern a situation in which the applicant was provided with a legal aid lawyer by the police, but rather a situation in which he was offered a choice of lawyer provided by the police, whose services the applicant had to pay for from his own funds. Therefore, the following wording of Article 6 § 3 (c) is applicable in the present case: "Everyone charged with a criminal offence has the following minimum rights: ... to defend himself ... through legal assistance of his own choosing ...". Thus, the Court considers that, in principle, an accused in criminal proceedings who is bearing the costs of his or her legal representation has the right to choose his or her defence lawyer, save for in exceptional circumstances where it is necessary to override this right in the interests of justice or where this is associated with justifiable and significant obstacles (see *Pavlenko*, cited above, § 98, and *Klimentyev v. Russia*, no. 46503/99, §§ 116-119, 16 November 2006).

95. The Court notes that when the applicant was arrested by the police, his family contacted lawyer G.M. to represent him. G.M., according to his account of the events (see paragraph 21 above), which the Government did not dispute, arrived at Rijeka Police Station on 14 March 2007 at around 10.45 a.m., before the questioning of the applicant by the police commenced. At that time G.M. did not have the power of attorney. The police did not allow him to see the applicant, neither did they tell the applicant that G.M. had been hired as his defence lawyer by his parents.

96. Later on the same date, at around 1.30 p.m., a legal trainee in G.M.'s office tried to contact the applicant at Rijeka Police Station, submitting a power of attorney signed by the applicant's father authorising G.M. to represent the applicant, but was again denied access without the applicant being told that G.M. was trying to contact him. At the same time, G.M. informed other relevant domestic authorities about the conduct of the police officers refusing him access to the applicant.

97. The Court notes that the documents in the criminal case file against the applicant do not reveal any good reasons for not allowing the lawyer G.M. to provide legal assistance to the applicant during police questioning, and neither the national courts nor the Government have provided any arguments in respect of the matter. The applicant, when brought before the investigating judge on 15 March 2007, the day after his arrest, expressly

stated that he wished to be represented by lawyer G.M. (see paragraph 17 above), to whom the police officers had denied access without providing any relevant reasons. Instead, without having told the applicant that G.M. had been hired as his defence lawyer by his parents, the police officers, according to the Government (see paragraph 85 above), offered the applicant a list of lawyers in accordance with Article 177 § 5 of the Code of Criminal Procedure (see paragraph 56 above) in order for him to choose one to represent him during police questioning, and from this list of lawyers, M.R. was hired to represent the applicant.

98. The Court observes that the Government never provided the list of lawyers which was allegedly presented to the applicant. The Court also notes that the Government did not dispute that M.R. had been the former chief of the Rijeka Police and that this lawyer had never charged the applicant for his services, which would normally be expected of a privately hired lawyer. In these circumstances, the Court has serious doubts as to whether the police acted in good faith and whether M.R. was a lawyer who would actually have been chosen by the applicant if he knew that his parents had engaged services of lawyer G.M. The fact that the applicant signed a power of attorney in favour of this lawyer authorising him to be present during his police questioning, in the circumstances of the present case, has no bearing on this finding, since it is the Court's well-established principle that the Convention is intended to guarantee rights that are practical and effective and not theoretical and illusory (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32; *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275; and *Salduz*, cited above, § 55).

99. Therefore, the Court excludes any possibility that by merely signing the power of attorney and providing a statement to the police, the applicant explicitly and unequivocally waived his right to retain G.M. as the lawyer of his own choosing and instead consented to be represented by M.R. This is because the right to counsel, being a fundamental right among those which constitute the notion of a fair trial and ensuring the effectiveness of the rest of the guarantees laid down in Article 6 of the Convention, is a prime example of those rights which require the special protection of the "knowing and intelligent waiver" standard established in the Court's case-law (see *Pishchalnikov v. Russia*, no. 7025/04, §§ 77-79, 24 September 2009).

100. The foregoing considerations raise serious concerns as to the manner in which the domestic authorities acted and as to the applicant's representation by a lawyer of his own choosing during the pre-trial interrogation by the police, guaranteed under Article 6 § 3 (c) of the Convention. It consequently calls for the Court's careful scrutiny in assessing whether the proceedings as a whole fall short of the requirements of a fair trial as required under Article 6 of the Convention.

101. In this respect the Court notes that during the criminal proceedings the applicant never complained that the lawyer M.R. had failed to provide him with adequate legal advice. The record of the applicant's statement to the police does not reveal any deficiencies in the advice given to the applicant concerning his rights. His statement was given over the course of several hours, during which time the applicant never refused to provide further information, and at the end of the questioning he acknowledged the accuracy of the information provided by signing the record of the statement.

102. Furthermore, the Court observes that it has found that the applicant failed to substantiate his allegations that he was subjected to ill-treatment or that the conditions of his police detention were inadequate (see paragraph 73 above). Accordingly, there are no grounds to believe that any pressure was exerted on him or that there was any defiance of his will.

103. Equally, the Court notes that the psychiatric report commissioned during the trial found that the applicant was able to understand the nature of his acts and to control his actions at the time when the offences were committed, which was only one day before he made the incriminating statements (see paragraph 39 above). Moreover, although the applicant claimed that he was under the influence of drugs and alcohol during police questioning, there is no concrete evidence in the case file to support such an assertion or to suggest that the degree of his addiction was such as to prevent him from understanding the nature and purpose of his questioning.

104. During the trial before the Rijeka County Court the applicant was given an opportunity to put forward all his arguments concerning the circumstances in which he had given his statement, and after he had raised the argument that he had never signed the record of the statement, he was afforded an effective opportunity to challenge the authenticity of his signature. However, the evidence adduced, namely the handwriting expert's report, conclusively confirmed that the applicant had signed the statement by which he had given his confession to the police (see paragraph 36 above). Therefore, it cannot be said that the applicant's objections regarding the admissibility of his statement as evidence were ignored by the trial court (see, by contrast, *Desde v. Turkey*, no. 23909/03, § 130, 1 February 2011).

105. Throughout the court proceedings the applicant had the benefit of effective legal advice, and the trial court afforded him an adequate opportunity to participate in the proceedings and to put forward his arguments in respect of the charges and all the relevant evidence adduced; his arguments were duly taken into account. The Court also notes that in his closing arguments at the trial the applicant, through his representative, presented the confession he had given to the police while represented by the lawyer M.R. as a proof of his sincere regret for the crimes committed in order for it to be taken into account as a mitigating factor in the sentencing procedure (see paragraph 44 above).

106. Furthermore, the Court notes that the applicant's confession was not the central platform of the prosecution's case (see, by contrast, *Magee v. the United Kingdom*, no. 28135/95, § 45, ECHR 2000-VI), and that the trial court relied on his statement interpreting it in the light of a complex body of evidence assessed by the court (compare *Bykov*, cited above, § 103). Specifically, when convicting the applicant, the trial court relied on the statements of a number of witnesses cross-examined during the trial, numerous expert reports and the records of the crime-scene investigation and searches and seizures, as well as relevant photographs and other physical evidence (see paragraphs 29-43 and 45-46 above). In addition, the trial court had at its disposal the confessions made by the applicant's co-accused at the trial and neither the applicant nor his co-accused ever argued that any of their rights had been infringed when they had made those statements.

107. Therefore, although the applicant was not represented by a lawyer selected on the basis of a fully informed choice during the police questioning, the Court does not consider that this rendered the proceedings as a whole unfair (compare *O'Kane v. the United Kingdom* (dec.), no. 30550/96, 6 July 1999), since all the applicant's rights were adequately secured during the trial and his confession was not the sole, let alone the decisive, evidence in the case and as such did not call into question his conviction and sentence (compare *Gäfgen v. Germany* [GC], no. 22978/05, § 187, ECHR 2010; and, by contrast, *Martin v. Estonia*, no. 35985/09, § 95-96, 30 May 2013).

108. Against the above background, and in view of the principle that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention (see, for example, *Zagorodniy*, cited above, § 51) and the requirement for the Court to evaluate the fairness of the criminal proceedings as a whole (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011), the Court considers that it has not been shown that the applicant's defence rights have been irretrievably prejudiced or that his right to a fair trial under Article 6 has been adversely affected (see, *mutatis mutandis*, *Mamaç and Others v. Turkey*, nos. 29486/95, 29487/95 and 29853/96, § 48, 20 April 2004, and *Sarıkaya v. Turkey*, no. 36115/97, § 67, 22 April 2004; and, by contrast, *Martin*, cited above, § 97).

109. Accordingly, in the light of these considerations, given the particular circumstances of the present case, the Court concludes that there has been no violation of Article 6 § 1 read in conjunction with § 3 (c) of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. Lastly, the applicant complained that his requests to hear certain witnesses had been denied without good reason.

111. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this complaint does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the applicant's right to a fair trial admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

Done in English, and notified in writing on 28 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges I. Berro-Lefèvre and J. Laffranque is annexed to this judgment.

I.B.L.
S.N.

DISSENTING OPINION OF JUDGES BERRO-LEFÈVRE AND LAFFRANQUE

Unfortunately we are unable to follow the majority in finding no violation of Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention. We consider that there was a violation of Article 6 §§ 1 and 3 (c), for the following reasons.

Central issue of this case and previous case-law of the Court

The central issue of this present case is the applicant's right under Article 6 § 3 (c) of the Convention to defend himself through legal assistance of his own choosing. As a result of his not having had this opportunity, it cannot be excluded that the applicant was prevailed upon in a coercive environment to incriminate himself. The foregoing affected the entire trial, made it unfair and led to a violation of Article 6 § 1.

Recently the Court dealt with a similar issue in the case of *Martin v. Estonia*, no. 35985/09, 30 May 2013, where it found a violation because the counsel of the applicant's own choosing was denied access to him. The Court pointed out in this connection that the guarantees in Article 6 § 3 (c) are specific aspects of the right to a fair hearing set forth in paragraph 1 of that 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. The Court also had regard to the subsequent use of statements made by the applicant during the preliminary investigation in breach of his defence rights. It is unfortunate that in the present case the majority did not follow the approach adopted unanimously in *Martin v. Estonia*.

Violation of the right to be represented by counsel of one's own choosing

In the present case, when the applicant was arrested by the police his family engaged the services of lawyer G.M. to represent him. However, the police denied G.M. access to the applicant without giving any valid reason. Furthermore, the applicant had never been informed that G.M. had come to the police station, even though he had expressly stated that he wished to be represented by G.M. Instead, according to the Government, the police offered the applicant a list of lawyers from which to choose one to represent him during police questioning, the Government failed to produce that list before the Court.

We are concerned that in § 94 of the judgment, without any explanation, the majority use the expression "legal aid lawyer provided by the police"

and "choice of lawyer provided by the police" as if they somehow considered it normal, or even legitimate, that the police should provide a lawyer for a suspect. This does not exactly correspond to the relevant national law cited in § 56 of the judgment: Article 177 § 5 of the Code of Criminal Procedure of Croatia provides for the police authorities to allow the suspect to appoint a lawyer from the list of lawyers on duty provided to the competent police authority by the county branches of the Croatian Bar Association.

We fail to see the meaning of the distinction made by the majority in § 94 of the judgment between a situation where the applicant is "provided with a legal aid lawyer by the police" and a situation where he "was offered a choice of lawyer provided by the police, whose services the applicant had to pay for from his own funds". To us the question of payment in this connection is irrelevant, since in many legal systems even the legal aid lawyers' fees need to be paid subsequently by the accused. How the lawyer is paid should not, as such, be a criterion in establishing whether there is "legal assistance of one's own choosing" or not. In the present case it is rather the fact that the lawyer M.R. did not charge the applicant for his services that raises questions about the good faith of the police.

The Government do not dispute that the appointed lawyer, M.R., was a former chief of Rijeka Police and that when acting as his lawyer he never charged the applicant for his services.

The Court has constantly held that a person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 99, Series A no. 80). It is true that notwithstanding the importance of a relationship of confidence between lawyer and client, this right cannot be considered to be absolute, but the national authorities may override the defendant's wish relating to legal representation only when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (*Pavlenko v. Russia*, no. 42371/02, § 98, 1 April 2010).

We are unable to accept the actions of the police in preventing lawyer G.M. from contacting the applicant, and failing to inform the applicant of G.M.'s presence in the police station despite applicant's wish to be represented by him, or the way the lawyer M.R. was involved in the case. Contrary to the principles cited above, the documents in the criminal case file against the applicant do not reveal any good – let alone relevant and sufficient – reasons for not allowing lawyer G.M to assist the applicant

during the police questioning, and neither the national courts nor the Government have produced any arguments in that respect.

In the circumstances M.R.'s background and the fact that he did not charge the applicant are also relevant and worrying. To our mind there was no waiver on the part of the applicant of his right to retain G.M., since the applicant had not been informed of G.M.'s arrival at the police station when he signed the power of attorney with M.R.

It is noteworthy that the majority also had serious doubts as to whether the police acted in good faith and whether M.R. was a lawyer the applicant would actually have chosen had he known about the other lawyer, G.M., hired by his parents (§ 98 of the judgment). The majority also acknowledge that the mere signature by the applicant of the power of attorney with M.R. did not constitute a "knowing and intelligent waiver" of his right to retain G.M. as lawyer. Therefore it is even more striking that, despite having serious concerns as to the manner in which the domestic authorities acted (see § 100 of the judgment) and the failure to allow the applicant to be represented by a lawyer of his own choosing during the pre-trial interrogation – a crucial moment in the criminal proceedings –, the majority found no violation of Article 6 § 3 (c). For us these serious concerns, including the manner in which M.R.'s services were proposed to the applicant by the police are valid grounds for a finding of a violation.

Possible pressure by the police to confess

Furthermore, the applicant consistently maintained that his statement was obtained in a coercive environment. Since it is established that the police and the Rijeka County State Attorney questioned the applicant while at the same time preventing him from meeting lawyer G.M., and suggested that he choose another lawyer proposed by them, the applicant's allegations of pressure exerted by the authorities do not appear completely misplaced.

Therefore the finding of the majority in § 106 of the judgment that the applicant never argued that any of his rights had been infringed when he made his statement seems to be in contradiction with the statement of facts in § 38 of the judgment, which reads: "On 2 April 2008 the applicant asked the Rijeka County Court to call lawyer G.M. as a witness in connection with the alleged unlawful extraction of his confession by the police. He pointed out that G.M. had not been allowed to see him while he had been in police custody and stated that he had been forced by the police officers to confess."

In addition, we fail to adhere to the conclusion made by the majority in § 105 of the judgment: "The Court also notes that in his closing arguments

at the trial the applicant, through his representative, presented the confession he had given to the police while represented by the lawyer M.R. as a proof of his sincere regret for the crimes committed in order for it to be taken into account as a mitigating factor in the sentencing procedure." In § 42 of the judgment it is stated that the applicant pleaded not guilty to the charges and in § 44 it is said that during the closing arguments: "The applicant's defence lawyer argued that it had not been proven that the applicant had committed the offences he was charged with. She pointed out, however, that if the trial court considered differently, then the applicant's confession to the police and his sincere regret had to be taken into consideration in sentencing him." Thus the lawyer used a common tactic of alternative pleadings and used the confession, in the event of sentencing, as a mitigating circumstance, which is by no means the same as maintaining the confession the applicant had given to the police while represented by the lawyer M.R.

Confession as evidence and overall fairness of the criminal proceedings

Although the applicant had the benefit of adversarial proceedings in which he was represented by a lawyer, the detriment he suffered because of the breach of due process at the pre-trial stage of the proceedings was not remedied by the subsequent proceedings. We think that the serious shortcomings in respect of legal assistance at such an important stage of pre-trial events seriously undermined the position of the applicant's defence at the trial as well. In these subsequent proceedings his confession was held to be admissible as evidence, and even though other evidence was adduced and the confession was not the sole evidence, it nevertheless played a decisive role, without any importance being attached to the circumstances in which the confession had been made (see *Panovits v. Cyprus*, no. 4268/04, § 75, 11 December 2008).

For all these reasons we conclude that there has been a violation of Article 6 §§ 1 and 3(c) of the Convention on account of the infringement of the applicant's right to defend himself through legal assistance of his own choosing.