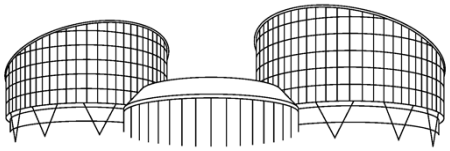

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RADZEVIL v. UKRAINE

(Application no. 36600/09)

JUDGMENT

Art 6 (criminal) • Art 6 § 3 c) • Fair hearing • Legal assistance of own choosing • Domestic courts' indirect reliance on self-incriminating statement formally excluded from the file • Applicant not represented on appeal by lawyers of his choice • Overall fairness of trial not undermined • Excessive length of proceedings

STRASBOURG

10 December 2019

FINAL

10/03/2020

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

In the case of Radzevil v. Ukraine,

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Ganna Yudkivska,
Branko Lubarda,
Carlo Ranzoni,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 19 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 36600/09) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Boris Karpovich Radzevil ("the applicant"), on 27 June 2009.

2. The applicant, who had been granted legal aid, was represented by Mr A.V. Leshchenko, a lawyer practising in Odesa. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna.

3. On 7 January 2016 the complaints concerning the alleged violation of the applicant's rights not to incriminate himself and to defend himself through the legal representative of his choosing, as well as his complaint about the length of the criminal proceedings against him, were communicated to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

4. On 12 April 2016 the applicant's wife, Mrs Nina Ivanivna Radzevil, informed the Court that the applicant had died on 12 January 2016. She expressed the wish to pursue the proceedings on his behalf.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1936 and died on 12 January 2016. Until his death he lived in Odesa.

6. On the morning of 12 September 2002 the applicant was driving to work in a white Toyota car. As he was approaching a pedestrian crossing, a pedestrian, G., started to cross the street. As the applicant subsequently explained in the course of his trial, G. suddenly fell into the applicant's traffic lane – a short distance away from the applicant's car – after an oncoming red vehicle had gone past at very high speed. According to the applicant, G. could have been hit by that oncoming vehicle (which has never been identified), or he could have slipped while trying to avoid colliding with that vehicle, or he could have fallen for some other reason. The subsequent investigation and proceedings before the domestic courts, however, were to conclude that G. had been hit by the applicant's car.

7. Immediately after the incident, the applicant stopped his car and placed G. in the rear seat. It is not clear from the documents submitted whether the applicant or a passer-by called an ambulance. After the ambulance arrived and took G. to hospital, the applicant left without waiting for the police.

8. G. died in Illichivsk Hospital later the same day from a number of cerebral, chest and upper-limb injuries.

9. The applicant came to the hospital on that day to enquire about G.'s health. A police officer, T., who was there for the investigation purposes, asked the applicant about the reason for his visit. As T. later stated, the applicant explained that he had accidentally hit G. with his car. According to the officer, the applicant agreed to show him the site of the accident and to explain how it had happened. According to the applicant's submissions during his subsequent trial, he came to the hospital because he had helped G., and he was therefore not indifferent to the latter's fate.

10. Immediately after, the police took the applicant to the site of the accident, where they drew up a scene inspection report. No traces of the accident were identified. Citing the absence of his signature on that report, the applicant later in the domestic proceedings submitted that he had neither shown the site to the police nor otherwise participated in that investigative measure.

11. On the same day, 12 September 2002, the applicant signed an "explanation" addressed to the Illichivsk police, according to which G. had unexpectedly emerged from behind a nearby moving vehicle as the applicant had been slowly driving his car through the pedestrian crossing and had suddenly fallen onto the bonnet of the applicant's car. From there – when the applicant had hit the brakes – G. had fallen onto the road. The

"explanation" contained a note to the effect that the applicant had been familiarised with the contents of Article 63 of the Constitution (providing the right not to incriminate oneself – see paragraph 44 below).

12. According to the applicant's submissions to the Court, he had not had his glasses with him and had signed the "explanation" without reading it. He denied having stated what was written there. The applicant also denied that his right not to incriminate himself had been explained to him. He pointed out that the note regarding the constitutional provision was written in a different ink, which proved, according to him, that it had been added later.

13. On 20 September 2002 the Illichivsk police instituted criminal proceedings against the applicant on suspicion of his having breached the traffic regulations, resulting in a fatal accident (see paragraph 45 below).

14. On an unspecified date K., a licensed advocate, was admitted to the proceedings as the applicant's defence lawyer.

15. On 11 December 2002 formal charges were brought against the applicant and his status changed from that of suspect to that of accused. As a preventive measure pending trial he was placed under an obligation not to leave the town.

16. According to the applicant, on 11 December 2002, during his questioning in the presence of his lawyer, he retracted the "explanation" dated 12 September 2002 (see paragraph 11 above), stating that he had given it under psychological pressure.

17. On an unspecified date the case was sent for examination to the Illichivsk Town Court ("the Illichivsk Court").

18. On 31 July 2003 the Illichivsk Court remitted the case for additional pre-trial investigation.

19. On 15 October 2003 the case file was again sent to the Illichivsk Court.

20. The Illichivsk Court adjourned its hearings several times owing to the absence of certain witnesses.

21. On 19 April 2004 it ordered a comprehensive forensic medical examination and an expert technical examination, as well as a fresh reconstruction of the events in question.

22. On 24 February 2005 some of the above-mentioned examinations were carried out.

23. On 30 March 2005 the term of office of V. – the judge who was dealing with the case – expired.

24. On 29 November 2005 a new judge, B., started examining the case.

25. On 4 July 2006 B. ordered a fresh reconstruction of the events. Apparently, the previous judicial order to that effect, of 19 April 2004 (see paragraph 21 above) had not been implemented.

26. On 10 July 2006 the above-mentioned investigative measure was carried out.

27. During the trial, the applicant denied having breached the traffic regulations or having hit G. with his car. He maintained his account of the events, as outlined in paragraph 6 above. The applicant submitted that there was no expert evidence or other evidence in the case file proving that his car had come into contact with G.'s body.

28. On 13 December 2006 the Illichivsk Court convicted the applicant as charged. It sentenced him to four years' imprisonment and divested him of his driver's licence for two years. However, the court issued an amnesty under the Amnesty Act. Accordingly, the applicant did not have to serve his sentence.

29. In convicting the applicant, the Illichivsk Court relied, in particular, on the following evidence. The victim's widow stated that the applicant had paid her 1,000 Ukrainian hryvnias (UAH) after G.'s death (which at the time was the equivalent of about 180 euros (EUR)) and that he had offered her UAH 30,000 (about EUR 5,400) in return for her not pressing criminal charges against him. A witness, V., who had been three metres away from the site of the accident, stated that he had seen a foreign-made car hit a man crossing the street at the pedestrian crossing in question. V. stated that the driver, whom he identified as the applicant, had placed the victim in the rear seat of his car; an ambulance had subsequently arrived and taken the latter to hospital. Another witness, R., submitted that he had been walking near the site of accident when, having heard a noise, he had turned his head and had seen the applicant's car on a pedestrian crossing and G. in front of the car. The applicant had got out of his car and had remarked that he had been driving slowly. Another witness, Ga., stated that she had been crossing the street at the same time and at the same pedestrian crossing as G., but in the opposite direction. After G. had passed her by, she had heard a car braking. She had turned around and had seen G. falling. The applicant's car had been there. The applicant had placed G. on the rear seat of his car saying: "I am sorry, I did not mean to". When Ga. had approached the applicant, he had said to her that he would take G. to hospital and that there was no point in calling the police. Ga. furthermore observed that, after the ambulance had taken G. away, the applicant had left the scene, even though the people present had told him that he should wait for the police.

30. The Illichivsk Court also examined the statements of two other witnesses, who had given a different version of the events in question. N. (whom the applicant's son had identified after having posted an appeal for witnesses in a local newspaper) was questioned for the first time before the court. He submitted that he had been driving in the direction of the intersection in question and had seen an oncoming red car driving at high speed. He had then seen a pedestrian falling and the applicant leaving his car and helping the victim. Furthermore, another witness, P., submitted that she had been about twenty metres away when she had seen G. falling without having been hit by any car. The applicant's car had approached and

the applicant had started to help the victim. Given that the statements of the above-mentioned two witnesses ran contrary to all the other evidence, the Illichivsk Court did not consider them credible.

31. The court also referred to the statement of T., the police officer, who had submitted that on 12 September 2002 the applicant had approached him in the hospital and had volunteered a confession that he had hit G. with his car (see paragraph 9 above). The court held that "an explanation could not be regarded as a source of evidence" and therefore excluded from the body of evidence the "explanation" signed by the applicant in the police station (see paragraph 11 above). It found, however, T.'s statement plausible having assessed it in the light of the assertions made by the applicant in the above-mentioned document and all the other available information. Two other police officers submitted that the applicant had participated in the scene inspection of 12 September 2002. They could not explain, however, the absence of his signature on that report (see paragraph 10 above).

32. As regards the results of the various forensic examinations – in particular, the examinations of the victim's body and of the applicant's car – the reports of those examinations were not conclusive as to whether G. had indeed been hit by the applicant's car.

33. On 28 December 2006 K., the applicant's lawyer, appealed on the applicant's behalf. In accordance with the applicable rules of criminal procedure, he lodged that appeal through the Illichivsk Court. Referring to the contradictions in the witness evidence, he submitted that the verdict should be quashed and the case remitted for additional pre-trial investigation.

34. On 14 February 2007 the Illichivsk Court ruled that the lawyer's appeal should be rejected without examination. On 29 January 2008 the Odesa Regional Court of Appeal ("the Court of Appeal"), however, quashed that ruling.

35. On 12 May 2008 the applicant modified the appeal lodged by his lawyer. He reiterated his plea of not guilty and submitted that his conviction had not been based on any conclusive evidence. The applicant argued, in particular, that nobody had actually witnessed the accident itself. As regards the statement of V. (see paragraph 29 above), the applicant observed that that witness had initially submitted that he had first heard a noise and had then seen G. falling. Accordingly, in the applicant's opinion, V.'s statement in court that he had witnessed the accident had been untruthful. In so far as the submissions of G.'s widow were concerned, the applicant observed that they had not been confirmed by any evidence. The applicant also denied having confessed to having hit G. with his car and having participated in the inspection of the scene (see paragraphs 9-12 above). The applicant submitted that the "explanation" signed by him on 12 September 2002 (see paragraph 11 above) had no legal standing and that its contents thus constituted inadmissible evidence, given that: firstly, he had signed it

without reading it as he had left his glasses at home, and, secondly, the paragraph asserting that his rights under Article 63 of the Constitution had been explained to him had been added later (see paragraph 12 above). The applicant accordingly insisted that the above-mentioned document should not be taken to confirm the truthfulness of the police officer's statements. Lastly, the applicant asked the appellate court to disregard his lawyer's request for the case to be remitted for additional investigation. Instead, he argued that the charges against him should be dropped for lack of evidence.

36. On the same day, 12 May 2008, the applicant notified the Court of Appeal that he had lost contact with his advocate, K., and asked it to admit to the proceedings in his stead two other lawyers, I. and P., who did not, however, have an advocate license.

37. On 26 August 2008 the Court of Appeal conducted a hearing at which the applicant reiterated his request for I. and P., who were present in the courtroom, to be admitted as his defence counsel. His request was refused.

38. On the same date the Court of Appeal upheld the judgment of the first-instance court, having found that it had assessed all the evidence in a correct and objective manner.

39. On 3 September 2008 the applicant, I. and P. complained to the President of the Court of Appeal that the judicial panel that had examined the applicant's case had arbitrarily denied him the right to be legally represented during the appeal hearing.

40. On 11 September 2008 the Deputy President of the Court of Appeal gave a written response to that complaint, noting that the panel had acted in accordance with Article 44 of the Code of Criminal Procedure and with Resolution no. 8 of the Plenary Supreme Court of Ukraine of 24 October 2003 on the application of legislation aimed at ensuring the right to mount a defence in criminal proceedings (see the reference in paragraph 46 below). In particular, under that Resolution, legal practitioners who, like I. and P., had no advocate's licence could not at the material time be admitted as defence counsel in criminal proceedings, as no statute had yet been enacted setting out the relevant admission criteria.

41. On 26 September 2008 the applicant lodged a cassation appeal reiterating his plea of not guilty and other previous arguments. In addition, he complained that by refusing to admit I. and P. to the proceedings as his defence counsel, the Court of Appeal had arbitrarily denied him his right to legal assistance.

42. On 5 January 2009 the Supreme Court dismissed the applicant's cassation appeal. It noted that the arguments raised by him were essentially the same as those properly dismissed by the Court of Appeal in the ordinary appeal proceedings.

43. On 22 December 2016 the Government informed the Court that the case file concerning the criminal proceedings against the applicant had been

destroyed owing to the expiry of its statutory storage period. The Government specified that they only had in their possession the judgment of the Illichivsk Court of 13 December 2006 (see paragraphs 28-32 above) and the ruling of the Court of Appeal of 26 August 2008 (see paragraph 38 above). They therefore noted that their observations were based on the documents produced by the applicant and the statement of facts prepared by the Court.

II. RELEVANT DOMESTIC LAW

44. The relevant provisions of the Constitution of Ukraine read:

Article 59

"Everyone has the right to legal assistance. Such assistance is provided free of charge in cases provided for by law. Everyone is free to choose the defender of his or her rights.

In Ukraine, advocacy acts to ensure the right to mount a defence against an accusation, and to provide legal assistance during the determination of cases by courts and other State bodies."

Article 63

"A person shall not bear responsibility for refusing to testify or to explain anything about himself or herself, members of his or her family or close relatives in the degree determined by law.

A suspect, an accused, or a defendant shall have the right to mount a defence.

A convicted person shall enjoy all human and citizens' rights, except for the restrictions determined by law and established in court judgments."

45. Under paragraph 2 of Article 286 of the Criminal Code of 2001, a breach by a driver of the rules regarding road safety or the operation and maintenance of his/her vehicle that leads to the infliction of death or grievous bodily harm upon a human being shall be punishable by a term of imprisonment of between three and eight years, and, optionally, by the confiscation of his/her driving licence for up to three years.

46. The domestic law and practice regarding the right to freely choose one's defence counsel are summarised in the Court's judgment in the case of *Zagorodniy v. Ukraine* (no. 27004/06, §§ 36-43, 24 November 2011).

THE LAW

I. AS TO THE *LOCUS STANDI* OF MRS RADZEVIL

47. The Court normally permits the next-of-kin to pursue an application, provided that he or she has a legitimate interest, where the original applicant has died after lodging that application with the Court (see *Murray v. the Netherlands* [GC], no. 10511/10, § 79, 26 April 2016, with further references). It has not been disputed in the present case that Mrs Radzevil, the applicant's wife and legal heir (see paragraph 4 above), is entitled to pursue the application on the applicant's behalf, and the Court sees no reason to hold otherwise (see, for example, *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, § 90, 6 October 2015). For practical reasons, Mr Radzevil will continue to be called "the applicant" in this judgment, although Mrs Radzevil is now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 2, ECHR 1999-VI).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

48. The applicant complained under Article 6 of the Convention that he had not had a fair trial for the following reasons: his privilege against self-incrimination had not been respected and he had been arbitrarily denied the right to freely choose his defence counsel. The applicant also complained that the length of the criminal proceedings against him had been unreasonable. The relevant provisions of the Convention that he relied on read as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time ... 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 ..."

A. Admissibility

49. The Court notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Fairness of the proceedings

(a) The parties' submissions

(i) As regards the alleged breach of the applicant's right not to incriminate himself

50. In his application form the applicant submitted that his privilege against self-discrimination had not been respected because, firstly, the respective constitutional provision had not been explained to him before his first police interview and, secondly, the document that he had signed without having been able to read it had contained untruthful information. The applicant also noted that the police officers had told him that they would not let him go unless he signed the "explanation". In his subsequent submissions to the Court, in reply to the Government's observations, the applicant submitted that he had signed the "explanation" on 12 September 2002 "under intense pressure from police officers [who had threatened] to put him in jail".

51. The applicant argued that, even though the "explanation" signed by him on 12 September 2002 had constituted an inadmissible piece of evidence, the domestic courts had *de facto* used it to secure his conviction. In the applicant's opinion, this had seriously undermined the overall fairness of his trial given, in particular, the contradictions in the other evidence.

52. The Government observed that the impugned "explanation" had been explicitly excluded from the evidence in the applicant's case. They contended that there had been nothing unlawful or arbitrary in the domestic courts' approach to verifying the credibility of the statement given by T., the police officer – particularly in the light of that "explanation".

53. The Government furthermore submitted that, according to the Court's case-law, it was the prerogative of the domestic courts to assess the evidence before them. The applicant's conviction had been secured by an extensive body of evidence, including statements by eyewitnesses to the accident.

54. Lastly, the Government noted that the applicant had had ample opportunity to put questions to the police officers and the witnesses, to put forward any arguments with a view to rebutting their statements and to challenge the veracity of their evidence as he saw fit.

(ii) As regards the alleged restriction on the applicant's right to defend himself through legal assistance of his choosing

55. The applicant complained that his request to be allowed to appoint legal counsel of his choosing to represent him during the appeal proceedings had been arbitrarily rejected. He submitted that the circumstances of his case were similar to those in the case of *Zagorodniy* (cited above), in which

the Court had found a violation of Article 6 §§ 1 and 3 of the Convention on account of the refusal of the applicant's request to be represented by a lawyer who did not hold an advocate's licence.

56. The applicant furthermore referred to his advanced age (72 at the time of the proceedings before the Court of Appeal) and his state of stress and confusion. According to him, after the rejection of his request to be represented by P. and I. he had not been able to effectively participate in the hearing. He submitted that, not being qualified to raise any legal arguments before the Court of Appeal, he had felt helpless and humiliated.

57. The Government submitted that the present case should be distinguished from that of *Zagorodniy* (cited above). They observed that in that case the applicant had been denied the benefit of the assistance of a lawyer of his choosing during the pre-trial investigation and the judicial proceedings. In the present case, however, the applicant had been represented by a licensed advocate of his choice during the pre-trial investigation and during the trial before the first-instance court – that is to say the most important stages of the criminal proceedings, during which evidence had been collected and assessed. Furthermore, that advocate had lodged an appeal on the applicant's behalf.

58. The Government also found it of relevance that lawyers I. and P., whom the applicant had unsuccessfully sought to get appointed as his representatives, had been present in the court room during the appellate hearing and the applicant had been free to ask them for advice. Equally, they could have helped him to draft his cassation appeal, without formally representing him.

(b) The Court's assessment

(i) General principles

59. The general principles with regard to the right to remain silent, the privilege against self-incrimination, access to a lawyer, and the relationship of those rights to the overall fairness of proceedings under the criminal limb of Article 6 of the Convention can be found in *Beuze v. Belgium* ([GC], no. 71409/10, §§ 120-50, 9 November 2018).

60. Further general principles regarding the right to legal assistance of one's own choosing can be found in the judgment in the case of *Dvorski v. Croatia* ([GC], no. 25703/11, §§ 76-82, ECHR 2015).

(ii) Application of those principles to the facts of the present case

(α) Privilege against self-incrimination

61. The Court notes that the applicant's first contact with the police occurred on 12 September 2002 in the hospital, where he went on his own initiative to enquire about G.'s health (see paragraph 9 above). There is no

indication that before that the authorities had had any reason to suspect the applicant's involvement in the traffic accident. T., the police officer, subsequently submitted that the applicant had volunteered his confession to having hit G. with his car (see paragraph 31 above); the applicant denied that (see paragraph 35 above). Be that it as it may, it is clear that his first conversation with the police gave rise to a "criminal charge" being brought against him within the meaning of Article 6 of the Convention (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 249, 13 September 2016, and *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-111, 12 May 2017). Accordingly, the protections afforded by that provision should have applied to the applicant from that moment onwards.

62. The Court further notes that the first investigative measure undertaken thereafter was the scene inspection on the same day. According to the applicant, he did not participate in it. The scene inspection report did not refer to any statements made by the applicant. As can also be seen from that document, the inspection did not reveal any traces of the accident or any other indices useful for the investigation (see paragraph 10 above).

63. The first documented self-incriminatory statement made by the applicant was the "explanation" signed by him on 12 September 2002. According to the applicant, his right to the privilege against self-incrimination under Article 63 of the Constitution had not been explained to him. Furthermore, he had allegedly been obliged to sign the "explanation" under psychological pressure and without being able to read it, because he had not had his glasses with him. The applicant also denied that he had admitted having hit G., contrary to what was stated in that document (see paragraphs 11, 12, 16 and 35 above).

64. The Court notes that the applicant's allegation that he was coerced into incriminating himself is rather vague and not supported by any evidence.

65. With regard to the question whether or not the applicant's procedural rights were duly explained to him prior to his signing of the "explanation" on 12 September 2002, the Court observes that this document contained a note to the effect that the applicant had been familiarised with the contents of Article 63 of the Constitution providing the right not to incriminate oneself (see paragraphs 11 and 44 above). The applicant though alleged that he had not been able to read the document, a fact which was not disputed by the Government. Furthermore, there is no evidence that the applicant had been familiarised with his right to legal assistance, as stipulated in Article 59 of the Constitution (see paragraph 44 above). The "explanation" lacked any such reference. The Court will therefore proceed on the assumption that the applicant was not informed of those procedural rights.

66. The Illichivsk Court recognised that the "explanation" in question was not a proper procedural document and excluded it from the file (see paragraph 31 above). However, in spite of this decision, the impugned

confession played a certain role in the domestic courts' assessment of the relevant facts, given that the Illichivsk Court referred to it by holding that the assertions matched against the other available information and confirmed the plausibility of police officer T.'s statements (see paragraph 31 above). The Court therefore considers that, in such circumstances, the formal exclusion of the applicant's self-incriminating statement did not cure the procedural defects, which had taken place at the early stage of the pre-trial investigation.

67. It remains to be seen whether the indirect reliance of the domestic courts on the applicant's confession in his "explanation" of 12 September 2002, made in the absence of the necessary procedural guarantees, undermined the overall fairness of the criminal proceedings against him.

68. In this exercise, the Court will examine, to the extent that they are relevant in the present case, the various factors deriving from its case-law and summarised in *Beuze* (cited above, § 150).

69. In this respect, the Court observes that a number of factors tend to argue in favour of considering the proceedings fair.

70. First of all, there is nothing that would indicate that the applicant was particularly vulnerable when giving the self-incriminating "explanation" of 12 September 2002. Nor is there any evidence that he had been coerced into it through either physical ill-treatment or psychological pressure (see paragraph 64 above).

71. The Court notes that the circumstances, in which the impugned document had been obtained, were duly analysed by the trial court, which decided to exclude it from the body of evidence on the grounds that it had not been recorded in compliance with the procedural requirements (see paragraph 31 above). Although, in spite of that decision, the "explanation" in question was indirectly relied on, its role was quite limited. Furthermore, there was other strong evidence against the applicant, including eyewitness statements (see paragraph 29 above).

72. The Court also notes that the applicant, who was represented by a lawyer of his choosing throughout the trial (see paragraphs 14 and 33 above), had ample opportunity to challenge the authenticity of the evidence and oppose its use.

73. Lastly, it is relevant to note that the case was examined by professional judges at three levels of jurisdiction. The domestic courts gave due consideration to all the evidence available and to the applicant's arguments about any procedural disadvantage he might have suffered at the very early stages of the investigation, and their decisions were properly reasoned in factual and legal terms.

74. Accordingly, the fact alone that the domestic courts indirectly relied on the applicant's self-incriminating statement cannot be regarded, in the Court's opinion, as having undermined the overall fairness of his trial.

(β) Right to defend oneself through legal assistance of one's choosing

75. The Court notes that during the pre-trial investigation and his trial before the first-instance court the applicant was represented by a lawyer of his choice, who also prepared and lodged an appeal on the applicant's behalf. It was only subsequently that the applicant requested, unsuccessfully, to be represented by two different lawyers, namely with the notification of 12 May 2008 and again at the appeal hearing of 26 August 2008 (see paragraphs 14, 33, 36-37 and 39-40 above). His right to freely choose his defence counsel was restricted at that stage, as the representatives of his choice were lawyers, but not licensed advocates. In the Court's opinion, such a restriction on the free choice of defence counsel may not in itself raise an issue under Article 6 § 3 (c) of the Convention, since the particular legal qualifications can be required to ensure the efficient defence of a person (see *Mayzit v. Russia*, no. 63378/00, § 68, 20 January 2005) and the smooth operation of the justice system (see *Meftah and Others v. France* [GC], nos. 32911/96 and 2 others, § 45, ECHR 2002-VII).

76. The Court observes that the applicant's request was refused by the appellate court on the same legal grounds as those criticised by the Court in the case of *Zagorodniy* (cited above, §§ 53-56). More specifically, the relevant domestic legislation lacked certainty. However, the Court agrees with the Government that the circumstances of the present case are different from those in the cited case (see paragraph 57 above). Indeed, the applicant in the present case was able to benefit from the legal assistance of his choosing at the most important stages of the criminal proceedings. Furthermore, nothing indicates that thereafter, during the appellate hearing, he was prevented from being advised by the two legal practitioners of his choosing who were present and by his side during that hearing (see paragraph 37 above).

77. As the Court has found on numerous occasions, compliance with the requirements of a fair trial must be examined in each case, having regard to the development of the proceedings as a whole and not on the basis of the isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Beuze*, cited above, § 121).

78. The Court finds no indication that the rejection of the applicant's request to be represented before the Court of Appeal by the legal practitioners of his choice had an irretrievable adverse effect on the overall fairness of his trial.

(γ) Conclusion

79. The Court considers that, taken as a whole, the criminal proceedings against the applicant were fair for the purposes of Article 6 of the Convention.

80. There has therefore been no violation of that provision in that regard.

2. Length of the proceedings

(a) The parties' submissions

81. The applicant also complained under Article 6 § 1 of the Convention that the proceedings against him had been inordinately lengthy and had contained unnecessary delays. He observed, in particular, that it had taken the Court of Appeal almost two years to examine his lawyer's appeal (see paragraphs 33 and 38 above).

82. The Government submitted that, in the absence of the case-file documents (see paragraph 43 above), they were not able to formulate their position regarding this complaint.

(b) The Court's assessment

83. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case in question and with reference to the following criteria: the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

84. Although the Court cannot benefit from the Government's observations on this matter (see paragraph 82 above), it considers that there is sufficient material in the case file before it to show that the length of the proceedings in question cannot be regarded as reasonable within the meaning of Article 6 § 1 of the Convention.

85. The Court observes that the criminal proceedings against the applicant, which concerned a traffic accident, officially started on 20 September 2002 (see paragraph 13 above) and ended on 5 January 2009, when the Supreme Court dismissed the applicant's cassation appeal (see paragraph 42 above). They thus lasted for a total of six years and almost four months. Such a duration, which was not short in absolute terms, could hardly be justified by the complexity of the case.

86. It took the Illichivsk Court until 13 December 2006 (see paragraph 28 above), that is four years and about three months, to deliver its judgment on the applicant's case, without there being any delays attributable to him. At the same time, the following delays in the proceedings attributable to the authorities can be discerned: for over two months as a result of the remittal of the case for additional pre-trial investigation (see paragraphs 18 and 19 above), and for eight months owing

to the expiry of the term of office of the judge dealing with the case (see paragraphs 23 and 24 above). It is also noteworthy that the Illichivsk Court had to order certain investigative measures be carried out repeatedly, which also contributed to the length of the proceedings. Thus, almost four years after the accident there was a need to repeatedly reconstruct the events in question (see paragraph 25 above).

87. The Court also takes note of the delay in dealing with the applicant's appeal: it took the courts over a year just to decide on its admissibility (see paragraphs 33 and 34 above).

88. The Court therefore considers that in the instant case the length of the criminal proceedings against the applicant was excessive, and failed to meet the "reasonable time" requirement.

89. There has accordingly been a breach of Article 6 § 1 of the Convention in this regard.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

91. The applicant claimed 2,955 euros (EUR) in respect of pecuniary damage. He indicated that that was the amount he had paid under the civil claim within the criminal proceedings against him. He also claimed EUR 20,000 in respect of non-pecuniary damage.

92. The Government contested the above claims.

93. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 500 under that head.

B. Costs and expenses

94. The applicant, who had been granted legal aid (see paragraph 2 above), also claimed EUR 2,520 for legal costs incurred before the Court, which corresponded to forty-two hours of work at EUR 60 per hour for the preparation of observations in response to those of the Government. The applicant noted that he would submit a copy of the legal assistance contract

and all the other documents in substantiation of that claim "later". He did not do so.

95. The Government contested the above claim as unfounded and excessive.

96. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the above claim in full.

C. Default interest

97. 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 application admissible;

2. *Holds* that there has been no violation of Article 6 of the Convention in respect of the fairness of the criminal proceedings against the applicant;

3. *Holds* that there has been a violation of Article 6 of the Convention in respect of the length of the criminal proceedings against the applicant;

4. *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, EUR 500 (five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Jon Fridrik Kjølbro
Deputy Registrar	President