



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

FIRST SECTION

**CASE OF GORAN KOVAČEVIĆ v. CROATIA**

*(Application no. 34804/14)*

JUDGMENT

STRASBOURG

12 April 2018

**FINAL**

**12/07/2018**

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



**In the case of Goran Kovačević v. Croatia,**

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

Linos-Alexandre Sicilianos, *President*,

Kristina Pardalos,

Aleš Pejchal,

Ksenija Turković,

Armen Harutyunyan,

Pauliine Koskelo,

Tim Eicke, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 21 November 2017 and 20 March 2018,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case originated in an application (no. 34804/14) 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 Goran Kovačević (“the applicant”), on 2 May 2014.

2. The applicant was represented by Mr A. Birimiša, a lawyer practising in Dubrovnik. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant complained that he had been ill-treated during his stay in the police station and that there had not been an effective response on the part of the domestic authorities in that respect. He also complained that during his stay in the police station he had been denied access to a lawyer and had been pressured into making incriminating statements against his co-accused.

4. On 30 June 2014 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Dubrovnik.

### **A. The applicant's arrest and stay in the police station**

6. On 21 October 2010, at 4:40 p.m. in Dubrovnik, police officers of the Criminal Police Department of the Dubrovnik-Neretva County Police (*Odjel kriminalističke policije Policijske uprave dubrovačko-neretvanske*) (hereinafter "the police") arrested the applicant on suspicion of drug abuse.

7. According to the Government, the applicant resisted arrest and the police had to apply force in order to be able to bring him to the police station. During this process both the applicant and one of the police officers who had arrested him, S.D., sustained minor bodily injuries.

8. According to the applicant, he did not resist arrest and did not sustain injuries during his arrest; rather, it was during his stay in the police station that the police officers ill-treated him in order to pressure him to make incriminating statements against his co-accused in the trial.

9. The applicant was taken to the police station immediately after his arrest. At 9.40 p.m. he was examined by a doctor, who found that he had sustained minor bodily injuries – excoriations on his left elbow, on the left side of his chest and behind his left ear. Minor bodily injuries were also found on the police officer, S.D., who had arrested the applicant – specifically, excoriations on his right knee and elbow. During their medical examination the applicant and the police officer S.D. stated that they had sustained their injuries by falling to the ground. The doctor's report of the examination was forwarded to the police.

10. According to a common report issued on the same day by the three police officers who arrested the applicant, S.D., L.D. and I.R., the applicant had resisted arrest and they had had to apply force in order to bring him to the police station. In particular, it was noted that the applicant had been found in a vehicle on the road and arrested. He had refused to step out of his vehicle, so S.D. had grabbed him by his left wrist and had applied the so-called "wristlock" technique in order to get him out of his vehicle. At that point police officer L.D. had grabbed the applicant by his right hand in order to apply the so-called "elbow-lock" technique, but due to the fact that the applicant had continued to resist all three of them had fallen to the ground. The applicant had tried to stand up and L.D. had kept him on the ground by pressing his knee against his back. The applicant had then been handcuffed and placed in the back seat of a police vehicle. In the police vehicle the applicant had continued to resist and the police officer S.D. had applied the "elbow-lock" technique and leaned him forwards in order to restrain him. By the time they had parked in front of the police station, one handcuff had come loose, so L.D. and I.R. had applied the "elbow-lock" technique again. When they had entered the police station the applicant had once again fallen to the ground. Then the applicant had been seated in a room and had ceased to resist, so the police officers had stopped using force and removed his other handcuff. Lastly, it was noted that during the

application of coercive measures the applicant and S.D. had sustained injuries which, according to the doctor's report, had been minor.

11. On the same day a shift manager of the Criminal Police Department noted in a report that the applicant had actively resisted arrest and that S.D., L.D. and I.R. had applied coercive measures against him – bodily force, restraining techniques and handcuffing. It was also noted that the applicant had been examined by a doctor, who had found that he had sustained excoriations on his left elbow, on the left side of his chest and behind his left ear. The applicant signed the report and stated that he did not have any objections to the procedure that had been followed.

12. On 25 October 2010 the chief of the Dubrovnik-Neretva County Police examined the information gathered in respect of the application of coercive measures against the applicant and found that they had been necessary, justified and lawful.

13. According to a police report made on the day of the applicant's arrest, the applicant was informed of the reasons for his arrest and his right to remain silent, to hire a lawyer of his own choosing and to have a person of his choice be informed of his arrest. The report noted that the applicant had declined to hire a lawyer and that he had asked that his father be informed of his arrest. In this connection it was noted that the applicant's father had been contacted at 6.20 p.m. The applicant signed the report without making any objections to its contents. On the same day the police lodged a criminal complaint against the applicant under a reasonable suspicion of drug abuse.

14. On 22 October 2010 at 9.45 a.m. the applicant was questioned by the police. In the report on his questioning it was noted that the applicant had been advised of his right to remain silent and to hire a lawyer of his own choosing who could be present during the questioning. In this connection it was noted that the applicant had declined to hire a lawyer. The applicant then gave a statement, explaining that in August 2010 he had on two occasions acted as an intermediary in the selling of amphetamines. He also stated that between 2008 and 2010 he had on several occasions bought cocaine from a certain D.Š. He expressed regret for his actions. The questioning ended at 11.10 a.m. The applicant signed the report on his questioning without making any objections regarding its contents.

#### **B. The applicant's questioning before the investigating judge**

15. On 22 October 2010 at 12 p.m. the applicant was brought for questioning before an investigating judge of the Dubrovnik County Court. A deputy Dubrovnik County State Attorney, K.K., was also present during the questioning. According to the report on his questioning, the applicant was twice advised by the investigating judge of his right to remain silent and to hire a lawyer of his own choosing, who could be present during the

questioning. The applicant replied that he understood the advice and the grounds for his being under suspicion and maintained that he did not require a lawyer for that day's questioning and that he would give a statement to the investigating judge and answer questions. He then explained that in August 2010 he had on two occasions acted as an intermediary in the selling of amphetamines and that between 2008 and 2010 he had on several occasions bought cocaine from D.Š. Lastly, the applicant stated that he had been arrested the day before at 5 p.m. and that apart from the use of force during his arrest he did not have any objections about the police conduct during his stay in the police station. The questioning ended at 12:50 p.m. The applicant signed the report on his questioning without making any objections as to its contents. He was then released.

### **C. Investigation and trial against the applicant**

16. On 29 October 2010 an investigation was opened in respect of the applicant and D.Š. on the reasonable suspicion of their having engaged in drug abuse. On 2 December 2010 the investigation was extended to encompass a third person, V.V.

17. On 3 December 2010 the applicant hired a lawyer, D.P., to represent him.

18. On 4 January 2011 the Dubrovnik County State Attorney's Office (*Županijsko državno odvjetništvo u Dubrovniku*) indicted the applicant, D.Š., and V.V. for drug abuse.

19. On 3 May 2011 a hearing was held before the Dubrovnik County Court, which the applicant and his lawyer attended. The hearing was adjourned in order for V.V.'s ability to follow the proceedings to be determined.

20. The hearing of 7 June 2011, which the applicant and his lawyer attended, was adjourned owing to the illness of the presiding judge.

21. At a hearing held on 20 June 2011, which the applicant and his lawyer attended, the Dubrovnik Country Court ("the trial court") established the identity of the defendants and the charges brought against them. The applicant stated that he understood the charges brought against him and the warnings regarding his rights given by the presiding judge and that he would present his defence and answer questions. He pleaded not guilty. He asked to give his defence at the end of the trial. Evidence was read out aloud, whereas certain evidence was excluded from the case file at the request of the defence. The trial court heard three witnesses.

22. At a hearing held on 21 June 2011, which the applicant and his lawyer attended, the trial court heard I.G., a witness.

23. At a hearing held on 1 July 2011, which the applicant and his lawyer attended, the trial court continued to hear I.G. and examined certain other evidence. The applicant's lawyer then proposed that the trial court examine

the medical records of the applicant's father who allegedly suffered a stroke after learning of the applicant's arrest, as well as a medical certificate dated 27 January 2011 confirming that on 21 October 2010 the applicant had been examined by a doctor and that the doctor's report had been forwarded to the police. He also proposed that the trial court hear the applicant's sister and examine the power of attorney by which she had hired a lawyer to represent the applicant during the time that the investigating judge was questioning him. The applicant's lawyer, D.P., explained that this proposed evidence was relevant for the establishing of the conduct of the police against the applicant. D.H., the lawyer allegedly hired by the applicant's sister, who represented D.Š., the applicant's co-accused in the trial, stated that the power of attorney in question had been signed in his office on the night when the applicant had been held in the police station. The trial court examined the applicant's father's medical records and rejected the other proposed evidence, considering them irrelevant for the proceedings at that point.

24. At a hearing held on 4 July 2011 the trial court heard the applicant's co-accused, D.Š. D.Š. stated, *inter alia*, that he had not sold drugs to the applicant and that he had learned from his lawyer, D.H., that the police had ill-treated the applicant in the police station and had beaten him. The trial court then heard the applicant.

25. The applicant reiterated the part of his statement given to the investigating judge on 22 October 2010 concerning the criminal accusation against him, namely that he had on two occasions acted as an intermediary in the selling of amphetamines. He retracted the part of his statement concerning the buying of cocaine from D.Š. He alleged that after he had been brought to the police station he had been physically and psychologically ill-treated and had been coerced to into giving such a statement to the investigating judge. He further alleged that the following morning his father and sister had come to the police station, and when he had seen his father crying, he had agreed to give his statement to the investigating judge. He explained that once he had been brought to the police station he had immediately confessed to being an intermediary in the selling of amphetamines. However, when the police had started questioning him about D.Š. and the cocaine, he had asked for a lawyer. Later, at one point police officer L.D. had told him that D.H. had arrived at the entrance of the police station but had not been allowed to come in. He alleged that he had been beaten by police officers L.D., S.D. and I.R.

26. When asked by the prosecutor, the applicant explained that during his arrest and transportation to the police station the police officers had used force against him and had beaten him. When further asked by the presiding judge and the lawyer, D.H., the applicant explained that even though on 22 October 2010 he had been advised by the investigating judge of his right to remain silent and to hire a lawyer, he had been afraid of the police

officers who had brought him before the investigating judge, given that they had been the same police officers who had beaten him. The applicant's lawyer then asked that the applicant's sister be heard on account of a conversation that she had had with the police officer, L.D. He also asked that D.H. be heard and that the medical documentation relating to the injuries the applicant had sustained during his questioning by the police be examined. The trial court dismissed these requests, considering such evidence to be unnecessary.

27. In a closing statement the applicant's lawyer asked the trial court to take into account, when determining the applicant's sentence, the fact that he had confessed to his crime. The applicant reiterated his lawyer's statement and added that he intended to finish school and start working and would never repeat his actions.

28. On 6 July 2011 the Dubrovnik County Court found the applicant guilty as charged and sentenced him to two years' imprisonment. It also found D.Š. and V.V. guilty as charged and sentenced them to eight and two years' imprisonment, respectively. In finding D.Š. guilty the trial court referred to, *inter alia*, the statement that the applicant had given to the investigating judge concerning his having purchased cocaine from D.Š. in the period between 2008 and 2010. It did not consider credible the applicant's allegation that he had given his statement to the investigating judge under police duress. It found that during the trial the applicant himself had alleged that he had given his oral statement to the investigating judge uninterruptedly, without the police officers being present, and after being advised of his right to hire a lawyer and to remain silent. In this respect it noted that the applicant had told the investigating judge that he had been ill-treated by the police only during his arrest, and not during his stay in the police station. It considered that the fact that the applicant had changed the nature of his allegation was an attempt to help his co-accused D.Š. in the trial.

29. The trial court dismissed evidence proposals relating to the applicant's alleged ill-treatment in the police station, specifically that his sister be heard in respect of this allegation, finding that his sister had not been present during his arrest and transportation to the police station, and later on had not been in the same room with the applicant and the police officers. As to the criminal accusation against the applicant, the trial court found that the applicant had confessed to being an intermediary in the sale of amphetamines and it took his confession into account as a mitigating circumstance.

30. The applicant appealed against the first-instance judgment to the Supreme Court (*Vrhovni sud Republike Hrvatske*). In his appeal he stated that he had not resisted his arrest and had not sustained injuries during his arrest. He explained that once he had been brought to the police station he had immediately and voluntarily confessed to his crime. Therefore, he could



have had no reason to resist the police only a few minutes beforehand. He further stated that the police had physically and psychologically pressured him into incriminating D.Š. and had denied him access to a lawyer. He alleged that he had given a statement to the investigating judge under duress applied by the police officers who had brought him before the investigating judge. He complained about the trial court's dismissal of his proposals regarding evidence relating to those circumstances. He lastly stated that, given that the trial court had believed the statement that he had given against D.Š. and had taken it into account when convicting D.Š., he should have been given a milder sanction.

31. On 29 February 2012 the Supreme Court upheld the applicant's conviction but reduced his sentence to one year's imprisonment. The Supreme Court found that in his appeal the applicant himself had stated that the police officers had had no reason to exert pressure on him given that he had immediately confessed his crime. As to the change of the applicant's line of defence during the trial, the Supreme Court agreed with the trial court that this had probably been an attempt to help his co-accused, D.Š., in the trial, rather than constituting a credible reason for retracting his earlier statements. The Supreme Court lastly found that the applicant's statement had helped to convict D.Š. and that therefore his sentence was to be reduced to one year's imprisonment.

32. The applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). He complained that during his stay in the police station he had asked for a lawyer and that his sister and father had hired D.H. to represent him. However, he stated that the police had forced him to waive this right. He further complained that he had been ill-treated during his stay in the police station. He explained that he had not resisted arrest and had not been injured during his arrest, but during his stay in the police station when he had been forced to incriminate D.Š.

33. On 7 November 2013 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded. The decision was served on the applicant's representative on 18 November 2013.

## II. RELEVANT DOMESTIC LAW

34. The relevant domestic law is set out in the case of *Mafalani v. Croatia* (no. 32325/13, §§ 54-60, 9 July 2015).

35. Meanwhile, on 31 March 2011 a new Police Act (*Zakon o policiji*, Official Gazette no. 34/2011 with subsequent amendments) came into force, whose provisions set out a procedure which should guarantee an independent and effective examination of an allegation of a violation of the person's rights and freedoms inflicted by a police officer.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained of being ill-treated during his stay in the police station and of the absence of an effective response on the part of the domestic authorities in that respect. 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.”

#### A. The parties’ arguments

##### 1. *The Government*

37. The Government contended that the injuries which the applicant had sustained during his arrest and transportation to the police station on 21 October 2010 did not reach the minimum level of severity to fall within the scope of Article 3 of the Convention. In particular, the applicant was a healthy young man and the minor injuries which he had sustained – excoriations on his left elbow, on the left side of his chest and behind his left ear, for which he had received prompt medical assistance – could not have caused him suffering reaching the minimum level of severity to fall under Article 3 of the Convention.

38. The Government further submitted that the applicant had failed to exhaust the domestic remedies because he had not lodged a criminal complaint against the police officers who had allegedly ill-treated him.

39. They further argued that the applicant had not complied with the six-month time-limit because his alleged ill-treatment by the police had occurred on 21 October 2010, whereas he had only lodged his application with the Court on 2 May 2014, without a criminal complaint with the national authorities having been lodged.

40. They also argued that the applicant’s allegations of ill-treatment during his stay in the police station were completely implausible and unsubstantiated. These allegations were not supported by the available evidence. In particular, the available reports on his arrest and transportation to the police station described in detail the manner in which he and one of the police officers who had arrested him, S.D., had sustained injuries. This was entirely owing to the applicant actively resisting his arrest and transportation to the police station. The injuries he had sustained – excoriations on his left elbow, on the left side of his chest and behind his left ear – corresponded to the course of events, as described in the reports. The applicant, on the other hand, never provided any details regarding his alleged ill-treatment in the police station, nor the exact manner in which,

according to his version of events, he had sustained his injuries in the police station. He only alleged in general terms that he had been “physically and psychologically ill-treated” by the police officers. In view of the foregoing, the applicant’s assertion of ill-treatment in the police station lacked credibility and therefore did not entail a procedural obligation under Article 3 of the Convention to investigate.

## *2. The applicant*

41. The applicant contended that he had been ill-treated by the police and had endured psychological trauma as a result of that ill-treatment. He therefore considered that the Government’s arguments that the injuries he had sustained did not reach the minimum level of severity to fall within the scope of Article 3 of the Convention were completely inappropriate and misplaced.

42. He pointed out that the domestic authorities had been under a duty to conduct an effective official investigation into his allegations of ill-treatment. Therefore, the fact that he had not lodged a criminal complaint against the police officers who had ill-treated him had no bearing on the admissibility of his application.

43. In the applicant’s view, no issue could arise with regard to the six-month time-limit, given that he had complained about his ill-treatment during the criminal proceedings against him.

44. He argued that the official version of events, according to which he had sustained injuries during his arrest and transportation to the police station, was incorrect. He maintained that he had not resisted arrest and that his injuries had been sustained not during his arrest but later on, during his stay in the police station. In particular, he explained that as soon as he had been brought to the police station he had immediately confessed his crime. Therefore, he could have had no reason to resist his arrest only minutes beforehand. He stressed that once he had confessed his crime the police officers had told him that he was of no interest to them, and that they had been after D.Š. Then, as the applicant explained, they had physically and psychologically ill-treated him in order to pressure him into making incriminating statements against D.Š. It was then that he had sustained his injuries. This was confirmed by the medical report issued on the same day. He added that additional psychological pressure had been imposed on him when on the following day his father and sister had come to the police station to see him, after which his father had suffered a stroke. Even though he had complained of ill-treatment by the police throughout the criminal proceedings against him, notably in the presence of the Deputy Dubrovnik County State Attorney, there had been no reaction whatsoever on the part of the domestic authorities as regards his complaints.

## B. The Court's assessment

45. The Court does not have to address all the objections raised by the Government because the complaint is in any event inadmissible for the following reasons.

46. The relevant general principles of the Court's case-law concerning the substantive and procedural aspects of obligations under Article 3 of the Convention are summarised in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90 and 100-101 ECHR 201581-90), and *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 182-85, ECHR 2012) respectively.

47. The Court reiterates that allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts 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, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25; *Labita*, cited above, § 121; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006 IX; *Ramirez Sanchez*, cited above, § 117; *Gäfgen*, cited above, § 92; and *Bouyid*, cited above, § 82).

48. Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation where an individual raises an arguable claim of ill-treatment (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII). Even in the absence of an express complaint, Article 3 of the Convention requires an official investigation where there are sufficiently clear indications that ill-treatment might have occurred (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007, and *Hassan v. the United Kingdom* [GC], no. 29750/09, § 62, ECHR 2014; see also *J.L. v. Latvia*, no. 23893/06, §§ 11-13 and 73-75, 17 April 2012, where the obligation to investigate arose, *inter alia*, on the basis of facts implied in the complaints made by the applicant during the criminal proceedings against him, and *Pădureț v. Moldova*, no. 33134/03, §§ 63-64, 5 January 2010, where the duty to undertake a prompt investigation arose on the basis of the results of a medical examination of the applicant, which revealed the possibility of ill-treatment).

49. In the present case the Court notes that there is no dispute between the parties that the applicant sustained minor bodily injuries on the day of his arrest. Their respective versions of events, however, differ with regard to the manner in which they were caused.

50. According to the Government, the applicant actively resisted his arrest and the police officers had to use force against him in order to restrain him and bring him to the police station. The manner in which he and S.D.,

one of the police officers who arrested him, sustained injuries was described in detail in the report on the applicant's arrest. The applicant, however, contended that he had not resisted his arrest, and had sustained injuries not during his arrest, but later on, in the course of his subsequent ill-treatment by police officers in the police station.

51. The Court observes that a medical report signed at 9.40 p.m. on 21 October 2010 (the day of the applicant's arrest) states that the applicant had sustained minor bodily injuries – excoriations on his left elbow, on the left side of his chest and behind his left ear. Minor bodily injuries were also found on S.D., the police officer who had arrested the applicant – specifically, excoriations on his right knee and elbow. The applicant and S.D. told the doctor who examined them that they had sustained their injuries by falling to the ground (see paragraph 9 above).

52. The Court notes that on the same day the shift manager of the police station to which the applicant was brought issued a report stating that he had actively resisted arrest and that the police officers had applied coercive measures against him, after which he had been examined by a doctor who had found that he had sustained excoriations on his left elbow, on the left side of his chest and behind his left ear. The applicant signed the report and stated that he did not have any objections to the procedure that had been followed (see paragraph 11 above).

53. The Court further notes that when he was brought before the investigating judge the following day, the applicant stated that, apart from their having used force during his arrest, he did not have any objections regarding the police conduct during his stay in the police station (see paragraph 15 above). The Court does not have at its disposal any evidence to conclude that the applicant stated this out of fear, as alleged by him.

54. The Court observes that following his questioning by the investigating judge on 22 October 2010, the applicant was released, and that from 3 December 2010 onwards he was represented by a lawyer of his own choosing (see paragraphs 15 and 17 above). However, it was not until 1 July 2011 that the lawyer submitted the applicant's medical certificate to the trial court, stressing that it was relevant in respect of establishing the conduct of the police towards the applicant (see paragraph 23 above). Then, at the hearing held on 4 July 2011, the applicant for the first time stated that he had been ill-treated during his stay in the police station (see paragraphs 25-26 above). The Court notes that the applicant's allegations of ill-treatment in the police station were made in the course of his retracting the statements given to the investigating judge by which he had incriminated D.Š.

55. The Court notes that the applicant gave conflicting statements as to the conduct of the police officers during his arrest and stay in the police station. In particular, at the hearing held on 4 July 2011 the applicant stated, when asked by the prosecutor, that during his arrest and transportation to the

police station the police officers had used force against him and had beaten him (see paragraph 26 above). However, in his appeal and constitutional complaint, as well as in his submissions before the Court, he maintained that he had not resisted his arrest and had not sustained injuries during his arrest. As soon as he had been brought to the police station he had confessed to his crime. Only after his confession had the police officers told him that he was of no interest to them, and then ill-treated him in order to pressure him into incriminating D.Š. It was then that he had sustained his injuries (see paragraphs 30, 32 and 44 above).

56. The Court further notes that the applicant never provided any details as to the manner in which the police officers had allegedly ill-treated him during his stay in the police station. In particular, at the hearing held on 4 July 2011 the applicant stated that he had been beaten by L.D., S.D. and I.R. (see paragraph 25 above). However, the Court notes that he never – neither before the domestic courts nor before this Court – substantiated this allegation or explained the manner in which he had sustained his particular injuries – excoriations on his left elbow, on the left side of his chest and behind his left ear – under circumstances in which S.D., one of the police officer who had arrested him, had also sustained excoriations on his right knee and elbow (see paragraph 9 above).

57. When viewed against the applicant's version of events, the Court accepts the Government's detailed explanation as to the course of the applicant's arrest and stay in the police station and the manner in which he and S.D. had sustained their particular injuries (see paragraphs 10 and 40 above).

58. In view of the foregoing considerations, and having regard to the particular circumstances of the present case, the Court is of the view that the applicant's complaints are not "arguable" for the purposes of Article 3 of the Convention and that the domestic authorities were not required to carry out an effective investigation into his alleged ill-treatment in the police station (compare *Zherdev v. Ukraine*, no. 34015/07, § 76, 27 April 2017 and *Sadkov v. Ukraine*, no. 21987/05, § 81, 6 July 2017).

59. Accordingly, the Court finds that the applicant's complaints of ill-treatment, under both the substantive and the procedural limbs of Article 3, should be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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

60. The applicant complained that his trial had been unfair because during his stay in the police station he had been denied access to a lawyer and had been pressured into making incriminating statements against his

co-accused. 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**

61. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties' arguments*

##### **(a) The applicant**

62. The applicant submitted that when he had been arrested on 21 October 2010 and taken to the police station, he had immediately confessed to the crime of which he was accused, namely that in August 2010 he had on two occasions acted as an intermediary in the selling of amphetamines. However, when the police had started questioning him about D.Š. and the cocaine, he had asked for a lawyer but the police officers had forced him to waive this right. He was then pressured into making incriminating statements against his co-accused in the trial, D.Š. Those statements had later on been used in the trial. He submitted that he had not complained about this to the investigating judge in view of the fact that the same police officers who had ill-treated him had later on brought him to the investigating judge.

63. The applicant added that on the day of his arrest his sister had hired a lawyer, D.H., to represent him, but that the police officers had refused to allow D.H. to enter the police station. He averred that at the hearing held on 1 July 2011 he had submitted a power of attorney dating from 21 October 2010 under which his sister had hired D.H. to represent him. However, the trial court had disregarded this evidence and had also refused to hear his sister and D.H. in respect of these circumstances.

64. The applicant finally explained that he had not submitted his complaints in this respect earlier in the trial because, under the rules on

criminal procedure, the accused was only heard by the court at the end of the trial.

**(b) The Government**

65. The Government submitted that the applicant had had a fair trial. In particular, the Government averred that before the applicant had been questioned by the police and the investigating judge he had been advised of his right to remain silent and to hire a lawyer of his own choosing. On both occasions he had stated that he understood his rights and that he did not wish to hire a lawyer and had signed the records of his questioning without any objections.

66. The Government further submitted that the applicant had given his statements to the police and the investigating judge of his own free will. As to his conviction, the Government claimed that the statements given to the police had been cumulative to other evidence against the applicant, including his own statements made during the trial.

67. Lastly, the Government submitted that after his release on 22 October 2010 the applicant had not hired a lawyer until 3 December 2010. Even then he had not hired D.H., who had allegedly been hired by his sister on 21 October 2010, but D.P., who had actively represented him until the end of the criminal proceedings against him.

*2. The Court's assessment*

**(a) General principles**

68. The Court reiterates that the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, as guaranteed by Article 6 § 3 (c), is one of the fundamental features of a fair trial (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 112, 12 May 2017; *Salduz v. Turkey* [GC], no. 36391/02, § 51, ECHR 2008, and *Dvorski v. Croatia* [GC], no. 25703/11, § 76, ECHR 2015). Prompt access to a lawyer constitutes an important counterweight to the vulnerability of suspects in police custody and provides a fundamental safeguard against coercion and ill-treatment of suspects by the police (see *Simeonovi*, cited above, § 112; *Salduz*, cited above, §§ 53-54, and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 255, ECHR 2016).

69. Like the other guarantees of Article 6, the right to legal assistance is applicable from the moment that a “criminal charge” exists within the meaning of this Court’s case-law (see *Simeonovi*, cited above, §§ 110 and 111) and may therefore be relevant during pre-trial proceedings if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to observe it (*ibid.*, § 114; see also *Ibrahim and Others*, cited above, § 253).



70. Neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. That also applies to the right to legal assistance (see, among other authorities, *Simeonovi*, cited above, § 115, and *Dvorski*, cited above, §§ 100 and 101). However, if it is to be effective for Convention purposes, such a waiver must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. The waiver need not be explicit, but it must be voluntary and constitute a knowing and intelligent relinquishment of a right. Moreover, the waiver must not run counter to any important public interest (see *Simeonovi*, cited above, § 115 with further references).

**(b) Application of these principles to the present case**

71. The Court observes in the present case that the applicant was questioned by the police on 22 October 2010. In the report on his questioning it was noted that he had been advised of his right to remain silent and to hire a lawyer of his own choosing who could be present during his questioning, and that he had refused to hire a lawyer (see paragraph 14 above). He then confessed that in August 2010 he had on two occasions acted as an intermediary in the selling of amphetamines and that between 2008 and 2010 he had on several occasions bought cocaine from D.Š. The Court notes that the applicant signed the report on his questioning without any objections.

72. The Court further observes that according to the report on the applicant's questioning before the investigating judge on 22 October 2010, the applicant was twice advised of his rights to remain silent and to hire a lawyer of his own choosing (see paragraph 15 above). However, he maintained that he did not require a lawyer and reiterated the statements he had given to the police. He further stated that apart from the use of force during his arrest he did not have any objections about the police conduct during his stay in the police station, and he did not make any objections regarding his lack of legal representation during his questioning by the police. He signed the report on his questioning without raising any objections.

73. The Court notes that after being questioned by the investigating judge on 22 October 2010 the applicant was released (see paragraph 15 above). In the Court's view, the applicant could already at that point have raised the issue of his allegedly having been denied access to a lawyer during his questioning by the police. However, he remained silent in this respect. The Court furthermore notes that from 3 December 2010 onwards he was represented by a lawyer of his own choosing (see paragraph 17 above). It was therefore expected that he would receive legal advice regarding his position at pre-trial. Nevertheless, even with the support of his

lawyer, he did not make any complaints regarding his allegedly having been denied access to a lawyer during his questioning by the police.

74. The Court furthermore observes that the trial against the applicant began on 4 January 2011 (see paragraph 18 above) and that it was not until a hearing held on 1 July 2011 that he raised the issue of his lack of legal representation during his questioning by the police (see paragraph 23 above). The Court cannot see any reasonable justification for the delay in making this complaint. In the Court's view the fact that the applicant gave an oral statement only at the end of the trial did not mean that he could not have brought this complaint earlier in the proceedings. This is particularly so given that prior to the hearing held on 1 July 2011 the applicant and his lawyer, D.P., attended two hearings during which the trial court took statements from the accused, heard witnesses and examined other evidence, without the applicant or his lawyer ever mentioning the issue of the applicant having allegedly been denied access to a lawyer during his questioning by the police (see paragraphs 21-22 above).

75. Therefore, (i) given that following his arrest on 21 October 2010 the applicant was several times advised of his right to hire a lawyer of his own choosing who could be present during his questioning, but (ii) given that the applicant nevertheless maintained before the police and the investigating judge that he did not require a lawyer, and (iii) having taken into account the fact that the applicant only raised the issue of his lack of legal representation during the police questioning at the end of the trial, even though he had been represented by a lawyer of his own choosing, D.P., from 3 December 2010 onwards, the Court concludes that the applicant explicitly and unequivocally waived his right to be represented by a lawyer during his questioning by the police.

76. As to the applicant's complaints that on the day of his arrest his sister had hired a lawyer, D.H., to represent him, but that the police officers refused to allow D.H. to enter the police station, the Court cannot take it against the domestic courts that they dismissed such complaints as not being credible. In particular, although being represented by a lawyer of his own choosing, D.P., from 3 December 2010 onwards, it was not until a hearing held on 1 July 2011 that the applicant raised this issue for the first time. Moreover, D.H., the lawyer allegedly hired by the applicant's sister, who represented D.Š., the applicant's co-accused in the trial, also raised this issue for the first time at the hearing of 1 July 2011. The Court is thus of the opinion that the applicant did not raise an arguable complaint that his waiver had not been knowing and intelligent (see, by contrast, *Dvorski*, cited above, § 102).

77. As to the applicant's complaint that he had been pressured into making incriminating statements against his co-accused, in view of the fact that this complaint was linked to the questions dealt with by the Court under Article 3 of the Convention (see paragraphs 45-59 above), the Court

considers that it is not necessary to examine the same question separately under Article 6 § 1 of the Convention.

78. Having regard to the foregoing, the Court concludes that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention inadmissible and the complaint under Article 6 §§ 1 and 3 (c) of the Convention admissible;
2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

Done in English, and notified in writing on 12 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos  
Registrar

Linos-Alexandre Sicilianos  
President