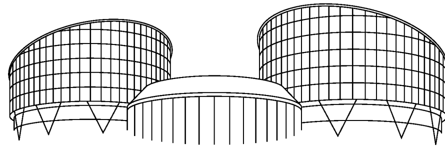

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PAIĆ v. CROATIA

(Application no. 47082/12)

JUDGMENT

STRASBOURG

29 March 2016

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Paić v. Croatia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 8 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 47082/12) 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 Zoran Paić (“the applicant”), on 9 July 2012.

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

3. The applicant alleged, in particular, that he had had no opportunity to question the only prosecution witness in the criminal proceedings against him.

4. On 9 February 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Šibenik.

6. On 26 August 2005 the Šibenik Municipal State Attorney’s Office opened an investigation against the applicant on suspicion of the theft of a mobile telephone from E.R., who had come to Croatia as a tourist from the Czech Republic.

7. On 20 September 2005 an investigating judge of the Šibenik County Court heard the applicant, who denied the charges against him. He explained that on the occasion in question some children from a house in Betina had thrown water-filled balloons at him. He had approached the house the children had come from and had knocked at the door, but no one had answered. He had then walked away. When he was back at home, two young women had come to ask for the mobile telephone belonging to one of them, but he told them he had not taken it.

8. In response to a request for international legal assistance from the Croatian prosecuting authorities, on 9 June 2006 the Chomutovo County Court in the Czech Republic heard evidence from E.R. She said that on 12 July 2005 in Betina, Croatia, her children had thrown water-filled balloons at the applicant. He had then approached the house they were staying in and through a window she had seen him steal her mobile telephone from a table on the terrace of that house. Together with her step-daughter she had followed the applicant to his house and asked him to return her telephone. However, he had denied taking it.

9. On 9 November 2006 the Šibenik Municipal State Attorney's Office indicted the applicant in the Šibenik Municipal Court (*Općinski sud u Šibeniku*) on the charge of stealing a mobile telephone from E.R.

10. During his trial before the Šibenik Municipal Court the applicant gave oral evidence on 18 May 2010. He reiterated the statement he had given before the investigating judge. Throughout these proceedings the applicant challenged the allegation against him, contending that, although there had been a dispute between him and E.R. over the behaviour of her children, he had not stolen her mobile telephone. The applicant's account was confirmed in essence by his former wife, who was also questioned as a witness during the proceedings.

11. At a hearing held on 27 October 2010 the Šibenik Municipal Court decided to admit the record of E.R.'s questioning as evidence without examining her directly. The applicant objected to the reading out of E.R.'s statement.

12. On 28 October 2010 the Šibenik Municipal Court found the applicant guilty as charged and sentenced him to four months' imprisonment suspended for one year. The finding of the applicant's guilt was based solely on the evidence given by E.R. The trial court held that it was clear that the applicant had been the person who had approached the house where E.R. and her family were staying. The evidence given by E.R. conclusively showed that the applicant had committed the offence at issue and that E.R. had no reason "to blame the accused without basis". The relevant part of the first-instance judgment reads:

> "Under Article 331 § 1(12) of the Code of Criminal Procedure this court read out the statement given by E.R. before the Chomutovo County Court, the Czech Republic, on 9 June 2009 without the parties' consent because there were sound reasons for

doing so, namely that the victim gave her evidence more than four years ago and this court considers that, owing to the passage of time, it would not learn any new facts or circumstances relevant for assessing the circumstances of the event [at issue], and was also mindful of the fact that the [charges against the accused] will become time-barred in July 2011 and ... summoning the victim would protract the criminal proceedings unnecessarily.

...

... considering the evidence given by witness and victim E.R. as being credible and truthful, this court has established the criminal responsibility of the accused because it has not found in the victim's statement any reason for which she would blame the accused without basis. ..."

13. In his appeal of 28 January 2011 the applicant argued, *inter alia*, that E.R. had never been summoned to a hearing during his trial before the Šibenik Municipal Court and that he had had no opportunity to question her. He also argued that E.R.'s mobile telephone had not been found in his possession. On 3 March 2011 the Šibenik County Court (*Županijski sud u Šibeniku*) dismissed the applicant's appeal as ill-founded, upholding the first-instance judgment. The relevant part of the appeal judgment reads as follows:

"In the reasoning of its judgment, the [first-instance] court stated the reasons why it had decided ... to read out the statement of the witness-victim E.R., stating that the victim had given her evidence more than four years previously, at which time her recollection of the event [at issue] would have been fresher than later, that the prosecution would become time-barred in July 2011 and since [the victim] was a foreign citizen ... summoning her [to a hearing] would protract the criminal proceedings unnecessarily.

... This decision of the first-instance court did not violate the defence rights of the accused ...

...

... it should also be said that the mobile telephone could not have been found in the accused's possession because nobody looked for it. The documents in the case-file show that the accused's home was not searched, which was a mistake on the part of the police. However, even without it, the [first-instance] court undoubtedly established that the accused had stolen the mobile telephone from the victim ..."

... "

14. On 13 May 2011 the applicant lodged a complaint before the Constitutional Court (*Ustavni sud Republike Hrvatske*), arguing that he had not had a fair trial as he had not been given an opportunity to question E.R.

15. On 8 December 2011 the Constitutional Court declared the applicant's constitutional complaint inadmissible as manifestly ill-founded. This decision was served on the applicant's counsel on 12 January 2012.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. Constitution

16. The relevant provision of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010) reads as follows:

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.

If any criminal charge is brought against him, the suspect, defendant or accused shall have the following rights ...

- to question witnesses for the prosecution or to have them questioned and to have witnesses for the defence questioned under the same conditions as witnesses for the prosecution ..."

2. Criminal Code

17. The relevant provision of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005) provides:

Theft

Article 216

"(1) Whoever takes another's movable property with the aim of keeping it unlawfully shall be fined or sentenced to imprisonment for a term of up to three years."

3. Code of Criminal Procedure

18. 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, 63/2002, 62/2003 and 115/2006) provided:

Article 243

"(1) If a properly summoned witness fails to appear without a justified reason, ..., he or she may be brought before the court and fined up to 20,000 Croatian kunas.

..."

Article 331

"(1) A written record of a witness's oral statement... may be read out following a decision given by a [trial] panel in the following circumstances:

1) if the person is deceased, or mentally ill or untraceable, or if it is impossible or difficult for him or her to appear at the trial on account of old age, illness or other important reasons,

2) if a witness or a medical expert refuses to testify at the hearing without a legally valid reason,

..."

Article 333

"After the questioning of a witness or an expert witness or reading out the records and other submissions, the president of the trial panel shall ask the parties and the victim whether they want anything to be noted."

19. The relevant provisions of the amended Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012) provide:

Article 502

"...

(2) The relevant provisions concerning the reopening of criminal proceedings shall be applicable in the event of a request for revision of any final court decision in connection with a final judgment of the European Court of Human Rights in which a violation of the rights and freedoms under the Convention for the Protection of Human Rights and Fundamental Freedoms has been found in respect of the defendant.

(3) A request for the reopening of proceedings in connection with a final judgment of the European Court of Human Rights may be lodged within a period of thirty days, starting from the date on which the judgment of the European Court of Human Rights becomes final."

Article 574

"...

(2) If, prior to the entry into force of this Code, a decision has been adopted against which a legal remedy is allowed pursuant to the provisions of the legislation relevant to the proceedings [in which the decision was adopted] ..., the provisions of that legislation shall be applicable [to the proceedings in respect of the remedy], unless otherwise provided under this Code.

(3) Articles 497-508 of this Code shall be applicable accordingly to requests for the reopening of criminal proceedings made under the Code of Criminal Procedure (Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 62/2003, and 115/2006)."

B. Relevant practice

20. In its judgment no. I Kž-37/09-6 of 9 September 2009, the Supreme Court dealt with the problem of admitting in evidence the written record of an oral statement by a witness who had been questioned at the pre-trial stage without the defence being provided with the opportunity to be present during the questioning. The Supreme Court noted, in particular:

> "The issue in this case is not whether it was impossible to 'bring the victim to Croatia', nor is it a problem of the direct questioning of the victim N.M. before the 'Croatian criminal court'; the issue lies in the fact that, through international legal assistance in criminal matters, the victim N.M. was twice heard as a witness by the Subotica Municipal Court [in Serbia] without informing the defendant D.B. or his defence counsel M.U. that such action (questioning of the victim) was being taken.
>
> ... [T]he Supreme Court, as the court of appeal, considers that in such circumstances the accused D.B. did not have an effective opportunity to challenge the witness's statement, which was decisive evidence for his conviction, and the Supreme Court therefore concludes that he did not have a fair trial as required under Article 6 § 3 (d) of the Convention as regards his right to have a central witness (the victim M.M.) questioned and his right to be present during her questioning irrespective of whether or not he wished to exercise that right."

THE LAW

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

21. The applicant complained that he had not had a fair trial in that he had not been given the opportunity to question a witness against him. He relied on Article 6 §§ 1 and 3(d) of the Convention, which, in so far as relevant, reads 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:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ... "

A. Admissibility

22. The Court notes that the application 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

23. The applicant argued that even though E.R. was the only prosecution witness, the Šibenik Municipal Court had never summoned her to his trial. He and his counsel had therefore been deprived of their right to cross-examine her.

24. The Government argued that the applicant, who had legal representation, had had the opportunity to present evidence and his arguments. However, save for the evidence given by his former wife, he had not put forward any additional evidence in order to rebut the evidence given by E.R.

25. As regards the statement given by E.R., the Government argued that it had been detailed and precise and was therefore credible. The national courts had given adequate reasons for their decision not to summon that witness to the applicant's trial. The applicant's objections to that had been properly addressed by the national courts.

2. The Court's assessment

(a) General principles

26. The Court reiterates that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision; it will therefore consider the applicant's complaint under both provisions taken together (see *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, 15 December 2015).

27. The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings. In making this assessment the Court will look at the proceedings as a whole, including the way in which the evidence was obtained, having regard not only to the rights of the defence but also to the interest of the public and the victims in seeing crime properly prosecuted (ibid., § 101).

28. The Court reiterates that Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all the evidence against him must normally be produced in his presence at a public hearing for the purpose of adversarial argument (ibid., § 103).

29. The principles to be applied in cases where a prosecution witness did not attend the trial and statements previously made by him or her were admitted as evidence have been summarised and refined in the Grand Chamber judgment of 15 December 2011 in *Al-Khawaja and Tahery* (*Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011). According to the principles developed in that judgment, it is necessary to examine in three steps the compatibility with Article 6 §§ 1 and 3 (d) of the Convention of proceedings in which statements made by a witness who was not present and questioned at the trial are used as evidence (ibid., § 152). The Court must examine

(i) whether there was a good reason for the non-attendance of the witness and, consequently, for the admission of the absent witness's untested statement as evidence (ibid., §§ 119-125);

(ii) whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction (ibid., §§ 119 and 126-147); and

(iii) whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps faced by the defence as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair (ibid., § 147).

30. Even where there were no good reasons for the non-attendance of a witness, the Court is still called upon to assess whether the witness statement was the sole or decisive evidence supporting the accused's conviction and whether there were sufficient counterbalancing factors to secure a fair and proper assessment of the reliability of such evidence (*Schatschaschwili*, cited above, §§ 113 and 116).

31. As to the order of the three steps of the *Al-Khawaja* test, the Court has held that, given that all three steps of the test are interrelated and, taken together, serve to establish whether or not the criminal proceedings at issue have, as a whole, been fair, it may be appropriate, in a given case, to examine the steps in a different order, in particular if one of the steps proves to be particularly conclusive as to either the fairness or unfairness of the proceedings (ibid., § 118).

32. The view of the Court is that the same principles apply in the present case.

(b) Application of these principles to the present case

(i) Whether there was a good reason for the non-attendance of witness E.R. at the trial

33. The applicant was found guilty of stealing a mobile telephone belonging to E.R. As to the question whether there was a good reason for admitting E.R.'s statement in evidence without having her questioned at the trial, the Court notes as follows.

34. Good reason for the absence of a witness must exist from the trial court's perspective, that is to say, the court must have had good factual or legal grounds for not having been able to secure the witness's attendance at the trial. If there was a good reason for the witness's non-attendance in that sense, it follows that there was a good reason, or justification, for the trial court to admit the untested statements of the absent witness as evidence (see *Schatschaschwili*, cited above, § 119). There are a number of reasons why a witness may not attend trial. The witness may have died in the meantime, or may fear for his or her safety (see *Al-Khawaja and Tahery*, cited above, §§ 120-125). The absence may be for health reasons (see, for instance, *Bobeş v. Romania*, no. 29752/05, §§ 39-40, 9 July 2013; *Vronchenko v. Estonia*, no. 59632/09, § 58, 18 July 2013; and *Matytsina v. Russia*, no. 58428/10, § 163, 27 March 2014) or because the witness proved to be untraceable.

35. The need for the authorities to make all reasonable efforts to secure the witness's attendance at the trial further implies careful scrutiny by the domestic courts of the reasons given for the witness's inability to attend trial, having regard to the specific situation of each witness (see *Schatschaschwili*, cited above, § 122).

36. On the facts of the present case, it appears that E.R. did not attend the applicant's trial simply because the trial court did not summon her. Indeed, there is nothing in the case file to suggest that any efforts whatsoever were made at any stage to ensure E.R.'s attendance at the proceedings against the applicant, even though her whereabouts were not unknown. Furthermore, there is no evidence to suggest that E.R. was asked, and refused, to make depositions within the framework of the applicant's trial for any reason, such as, for example, a fear of negative repercussions (see and compare with *Al-Khawaja and Tahery*, cited above, §§ 122-124).

37. As to the reasons put forward by the national courts for such conduct, the Court notes that these were the following: the passage of time, meaning that E.R. could not have provided any new elements to add to her previous statement; the fact that E.R. resided in another country, namely, the Czech Republic; and the risk that the prosecution would become time-barred.

38. The Court is not convinced that, in the particular circumstances of the case, the fact that E.R. resided outside Croatia could be considered a good reason justifying the failure to have the witness examined and for admitting her evidence. The fact that a witness is absent from the country where the proceedings are being conducted is in not itself sufficient to satisfy the requirements of Article 6 § 3 (d), which requires the Contracting States to take positive steps to enable the accused to examine or have examined witnesses testifying against him (see *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII, and *Gabrielyan v. Armenia*, no. 8088/05, § 81, 10 April 2012). Such

measures form part of the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 are enjoyed in an effective manner (see *Colozza v. Italy*, 12 February 1985, § 28, Series A no. 89, and *Gabrielyan*, cited above, § 81). However, in the present case the trial court did not even attempt to summon witness E.R. to a hearing in the applicant's trial.

39. As regards the passage of time and the risk that the prosecution would become time-barred, the Court reiterates that the Convention requires the Contracting States to organise their legal systems so as to enable the courts to comply with their various requirements (see, *mutatis mutandis*, *Bezicheri v. Italy*, 25 October 1989, § 25, Series A no. 164, and *E. v. Norway*, no. 11701/85, § 66, 29 August 1990). It is incumbent on the judicial authorities to make the necessary administrative arrangements to ensure that the prosecution in criminal proceedings does not become time-barred, without entailing unjustified detriment to the rights of defence. Appropriate steps to that end do not appear to have been taken in the present case.

(ii) Whether the evidence of the absent witness was the sole or a decisive basis for the applicant's conviction

40. As regards the question of whether or not the evidence of the absent witness whose statements were admitted in evidence constituted the sole or a decisive basis for the defendant's conviction (second step of the *Al-Khawaja* test), the Court has held that the term "sole" evidence is to be understood to mean the only evidence against the accused (see *Al-Khawaja and Tahery*, cited above, § 131). "Decisive" evidence should be narrowly interpreted as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case (see *Schatschaschwili*, cited above, § 123).

41. E.R.'s description of the events constituted the sole – and therefore also decisive – evidence on which the national courts' findings of the applicant's guilt were based, since the only other witness heard by the Šibenik Municipal Court was the applicant's former wife, who supported his version of events.

(iii) Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured

42. The Court must further determine, in a third step, whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured as a result of the admission of the decisive evidence of the absent witness. The following elements have been identified by the Grand Chamber in the case of *Schatschaschwili* as being relevant in this context: the trial court's approach to the untested evidence, the availability and strength of further incriminating evidence, and the

procedural measures taken to compensate for the lack of opportunity to directly cross-examine witnesses at the trial (see *Schatschaschwili*, cited above, § 145).

(α) The trial court's approach to the untested evidence

43. The Court notes that in the national court's judgments there is no indication that they approached the statement given by E.R. with any specific caution or that the fact that she was an absent witness prompted the national courts to attach less weight to her statement (compare, for instance, *Al-Khawaja and Tahery*, cited above, § 157, and *Bobeş*, cited above, § 46). On the contrary, the national courts based the applicant's conviction solely on the statement given by E.R. and held that her statement was "credible and truthful", without providing detailed reasons for such a view (compare to *Brzuszczyński v. Poland*, no. 23789/09, §§ 85-86 and 89, 17 September 2013; *Prăjină v. Romania*, no. 5592/05, § 59, 7 January 2014; and *Nikolitsas v. Greece*, no. 63117/09, § 37, 3 July 2014).

(β) Availability and strength of further incriminating evidence

44. The Court further observes that the national courts, as shown above (see paragraph 12 above), did not have before them any additional incriminating evidence supporting the witness statement made by E.R. The Court cannot help but note that the national authorities did not make any serious attempt to collect further evidence. Thus, E.R.'s daughters, and her step-daughter were not summoned as witnesses, even though there is an indication that they witnessed the events at issue (see paragraphs 7 and 8 above). Also, as was noted by the Šibenik County Court, the police did not attempt to search for E.R.'s mobile telephone on the applicant's person or in his home (see paragraph 13 above) or to track it.

(γ) Procedural measures aimed at compensating for the lack of opportunity to directly cross-examine the witness at the trial

45. The Court observes that the applicant had the opportunity to give his own version of the events – an opportunity of which he availed himself at a hearing held before the Šibenik Municipal Court on 18 May 2010 (see paragraph 10 above) – and to cast doubt on the credibility as a witness of E.R., whose identity was known to him.

46. However, neither the applicant nor his lawyer had the opportunity to examine E.R. at any stage of the proceedings, since she had never been heard by a court in Croatia, or even at the investigation stage.

47. When E.R. gave her evidence previously, in the Czech Republic, at the request of the Croatian prosecuting authorities, the applicant was not invited to attend the hearing, either in person or by means of a video-link. What is more, neither the documents in the case file nor the Government's observations indicate that the applicant and his counsel were invited to put

questions to E.R in writing (see *Yevgeniy Ivanov v. Russia*, no. 27100/03, § 49, 25 April 2013; *Vronchenko v. Estonia*, no. 59632/09, § 65, 18 July 2013; and *Scholer v. Germany*, no. 14212/10, § 60, 18 December 2014). Furthermore, no video recording of the questioning of the absent witness E.R. was shown at the hearing (see *Schatchaschwili*, cited above, § 127).

48. In these circumstances, and bearing in mind that the applicant had insisted – throughout the proceedings – on E.R.'s being questioned, the Court does not consider that the applicant waived his right to question the witness (see, among many others, *Gabrielyan*, cited above, § 85).

(δ) Assessment of the trial's overall fairness

49. In assessing the overall fairness of the trial, the Court will have regard to the available counterbalancing factors, viewed in their entirety, in the light of its finding to the effect that the evidence given by E.R. was the sole evidence on which the applicant's conviction was based (see paragraph 32 above).

50. The Court observes that the trial court did not have before it any additional incriminating evidence regarding the offence of which the applicant was found guilty. Moreover, there is no indication that the prosecution made any effort to present further evidence against the applicant (see paragraph 42 above).

51. That the applicant was in a position to challenge or rebut the statement of E.R. by giving evidence himself or examining one other witness cannot be regarded as a sufficient counterbalancing factor to compensate for the handicap under which the defence laboured. The applicant was unable to test the truthfulness and reliability of the evidence produced by E.R. by means of cross-examination despite the fact that it was the sole evidence against him (see *Al-Khawaja and Tahery*, cited above, §162 and 165). Consequently, he was convicted on the basis of evidence in respect of which his defence rights were appreciably restricted.

52. The Court also attaches significant weight to the fact that the national courts did not even attempt to summon E.R. to the applicant's trial and that the reasons they provided for such conduct were not sufficient. In view of the importance of the statements of the only eyewitnesses to the offence of which he was convicted, the Court considers that the counterbalancing measures taken, if any, were insufficient to permit a fair and proper assessment of the reliability of the untested evidence.

53. Accordingly, the Court finds that neither the applicant nor his lawyer was given an opportunity to confront and question E.R. or to have her orally examined in the applicant's presence at any stage of the proceedings (see *Nechto v. Russia*, no. 24893/05, § 125, 24 January 2012, and *Vronchenko*, cited above, § 65; and contrast *Chmura v. Poland*, no. 18475/05, § 56, 3 April 2012; *Gani v. Spain*, no. 61800/08, § 48, 19 February 2013; and *Aigner v. Austria*, no. 28328/03, § 41, 10 May 2012).

54. Assessing the fairness of the proceedings as a whole, the Court concludes that there were not sufficient counterbalancing factors to compensate for the handicaps faced by the defence as a result of the admission of E.R.'s statement. It therefore finds that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 1,500 euros (EUR) in respect of non-pecuniary damage.

57. The Government argued that, were the Court to find a violation of Article 6 in the present case, that would constitute sufficient just satisfaction for the applicant.

58. The Court firstly notes that the applicant has the possibility of seeking a fresh trial (under Article 502 of the Code of Criminal Procedure). However, the Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violation found which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum claimed, that is to say EUR 1,500 in respect of non-pecuniary damage plus any tax that may be chargeable to the applicant.

B. Costs and expenses

59. The applicant also claimed 10,250 Croatian kuna (HRK) for the costs and expenses incurred before the domestic courts and HRK 3,030 for those incurred before the Court.

60. The Government argued that the applicant had not proved that he had incurred any costs for his representation before the domestic courts and that the costs for the translation of documents had not been necessary. They also deemed the sums claimed excessive.

61. 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 considers it reasonable to award the sum of EUR 1,200 covering costs under all heads.

C. Default interest

62. 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 a violation of Article 6 §§ 1 and 3(d) of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kuna at the rate applicable at the date of settlement:
(i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for costs and expenses.

Done in English, and notified in writing on 29 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Işıl Karakaş
Registrar President