



FIRST SECTION

CASE OF GALOVIĆ v. CROATIA

(Application no. 45512/11)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Proceedings and penalties for minor offences and on indictment forming part of a coherent whole to punish individual acts and patterns of domestic violence in an effective, proportionate and dissuasive manner • Duality of proceedings following complementary purposes and foreseeable for applicant • Interaction between courts, deduction of sentence and sufficient connection in time between various proceedings, bearing in mind specific dynamics in the context of domestic violence
Art 6 § 1 (criminal) and Art 6 § 3 (b) and (c) • Fair hearing • Adequate time and facilities to prepare defence before appeal court session and respect for the right to be legally represented • Applicant's absence from appeal court session

STRASBOURG

31 August 2021

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

In the case of Galović v. Croatia,

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

Péter Paczolay, *President*,
Ksenija Turković,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the above application 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 Miljenko Galović (“the applicant”), on 18 July 2011,

the decision to give notice to the Croatian Government (“the Government”) of the complaint concerning the right not to be tried or punished twice, the applicant’s absence from the session of the second-instance court, and the complaints concerning his right to defend himself in person or through effective legal assistance and his right to be afforded adequate time and facilities to prepare his defence, and to declare inadmissible the remainder of the application,

Having deliberated in private on 29 June 2021,

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

INTRODUCTION

1. The applicant was convicted of several minor offences of domestic violence. Ultimately, he was also convicted of domestic violence and child neglect in criminal proceedings on indictment. He complained under Article 6 § 3 (b) of the Convention that, owing to the brevity of the period between the date when he had been informed of the appeal court’s session and the actual date of that session, he had not had sufficient time to find a lawyer and to prepare his defence. He further complained that his absence from the appeal court session resulted in a breach of his rights under Article 6 § 3 (c) of the Convention. Finally, the applicant complained that he had been tried and convicted twice of the same offence contrary to Article 4 of Protocol No. 7 to the Convention.

THE FACTS

2. The applicant was born in 1957 and lives in Zagreb. He was represented before the Court by Ms T. Milanković Podbrežnički, a lawyer practising in Zagreb.

3. The Croatian Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 4 July 2007 the Zagreb Municipal Court (*Općinski sud u Zagrebu*) found the applicant guilty in criminal proceedings concerning domestic violence and neglect and abuse of a minor child for the period between March 2002 and the end of February 2005. He was sentenced to two years' imprisonment suspended for a period of five years. That judgment was upheld on appeal and the suspended sentence was subsequently revoked (see paragraph 33 below).

A. The minor-offence proceedings

6. Meanwhile, on 6 October 2006 the Zagreb Minor Offences Court (*Prekršajni sud u Zagrebu*) found the applicant guilty of a minor offence of domestic violence under section 4 of the Protection against Domestic Violence Act (see paragraph 68 below) against his minor daughter Z.G., committed on 5 October 2006. He was sentenced to fifty days' imprisonment suspended for one year.

7. On 2 February 2007 the Zagreb Minor Offences Court found the applicant guilty of a minor offence of domestic violence against his wife Mi.G. and his son H.G committed on 30 January 2007. He was sentenced to ten days' imprisonment, whereas his previous suspended sentence had been revoked (see paragraph 6 above) and he was sentenced to a total of fifty-nine days' imprisonment.

8. On 3 April 2007 the same court found the applicant guilty of a minor offence of domestic violence against his wife Mi.G., his son H.G. and his minor daughter Z.G. committed earlier that same day. He was sentenced to forty days' imprisonment suspended for ten months.

9. On 16 January 2008 the Zagreb Minor Offences Court found the applicant guilty of a minor offence of domestic violence, in that on 10 January 2008 he had verbally insulted his daughters Z.G. and M.G. and his wife Mi.G. The applicant was given a suspended sentence of seventy-six days' imprisonment, taking into account a previously imposed suspended sentence (see paragraph 8 above), with a one-year probation period. That judgment was upheld on appeal.

10. On 4 November 2008 the Kutina Social Welfare Centre received a complaint from Mi.G. She alleged that on 3 November 2008 the applicant had behaved violently in their family home, had blamed her for the loss of his job and had been threatening to kill her since 2005. She produced medical documentation of the same day, indicating that she had sustained injuries to her head. The Kutina Social Welfare Centre lodged a criminal complaint with the police.

11. On 4 November 2008 the police instituted minor-offence proceedings against the applicant before the Zagreb Minor Offences Court for the minor offence of domestic violence under section 4 and section 18(3) of the Protection against Domestic Violence Act committed on 3 November 2008 against Mi.G. – who by that time was his former spouse – and his daughter M.G.

12. On the same day the applicant was arrested and placed in detention.

13. On 17 November 2008 the Zagreb Minor Offences Court found the applicant guilty of violent behaviour within the family towards Mi.G. and his older daughter M.G. and sentenced him to thirty days' imprisonment. At the same time it revoked the applicant's previous suspended sentence (see paragraphs 8 and 9 above), and imposed a sentence of 112 days' imprisonment in total. The relevant part of that judgment read as follows:

“The accused, Miljenko Galović, ... is guilty in that on 3 and 4 November 2008 at 10.02 a.m. in [his] family house in ... while being under the influence of alcohol, he behaved violently within [his] family, in that on 3 November 2008 at about 4 p.m. he verbally insulted his daughter M.G. and former spouse Mi.G. by saying to them ‘Whores, sluts, I have lost my job because of you!’, after which his daughter M. left the house, and after her return at about 8.30 p.m. he continued to insult her by saying ‘Slut, whore, you and your mother, I have lost my job because of you!’, after which she locked herself in a room while the accused banged at the door of her room, continuing to insult her by saying ‘Slut, whore, get out of the house, go to your lover, go away!’, and on 3 November 2008 at 5 p.m. he verbally assaulted his former spouse Mi.G. by saying ‘Whore, do you know that I got fired today because of you. I will throw you out of the house, I will kill you. Now you have no alimony, the bank will take your assets. See how stupid you are, a whore from Moslavina-Zagorje!’, after which he went to sleep and when he woke up at 6.30 p.m. he went to the room where his former spouse was and continued to verbally insult her by saying ‘Whore, I lost my job today’, after which he physically assaulted her by approaching the bed on which she was sitting, grabbing her by the hair with both hands and throwing her onto the bed. He [continued to] hold her by the hair with his left hand and with his right hand he slapped her several times on the left cheek and ear while saying to her ‘Come on, shout, shout, I will kill you before the police arrive. If you put me in prison, after two years I will find you, you are mine!’

...

The court inspected ... the record of examination of blood alcohol [of 4 November 2008].”

14. By a judgment of 28 January 2009, the High Minor Offences Court altered the legal characterisation of the offence and held that it was an offence under section 18(1) of the Protection against Domestic Violence Act, and not section 18(3) of that Act. Otherwise, it dismissed an appeal by the applicant and upheld the first-instance judgment, which thus became final.

B. The proceedings on indictment

15. On 4 November 2008 Mi.G. lodged a criminal complaint against the applicant with the Kutina police, concerning the events of 3 November 2008. On 2 December 2008 the police supplemented Mi.G.'s criminal complaint with previous events covering the period between February 2005 and 4 November 2008 and forwarded it to the Zagreb Municipal State Attorney's Office.

16. On 2 December 2008 the applicant was transferred from detention for minor offences to criminal detention, on suspicion of having committed criminal offences: domestic violence against his spouse, his two daughters and his son; and child neglect and abuse against his younger daughter.

17. On 3 December 2008, referring among other things to documents on the basis of which the previous minor offence proceedings had been conducted, the Zagreb Municipal State Attorney's Office requested the investigating judge to conduct investigative activities in respect of the applicant in relation to criminal offences: four counts of domestic violence perpetrated against his former spouse, his two daughters and his son, and one count of child neglect and abuse against his younger daughter Z.G. On the same day the applicant was heard by an investigating judge of the same court, in the presence of E.H, a defence lawyer of his own choosing. He denied the charges against him. The investigating judge ordered that the applicant be detained for forty-eight hours on the grounds that there was a danger that he would suborn witnesses.

18. The applicant's detention was subsequently extended throughout the investigation and his trial.

19. On 12 December 2008 the applicant sent his written defence to the investigating judge.

20. On 15 December 2008 the investigating judge heard evidence from: an expert witness in psychiatry who had carried out a psychiatric examination of the applicant in 2005, a lawyer from the Social Welfare Centre in charge of the applicant and his family, and the applicant's former spouse Mi.G. Neither the applicant nor his defence lawyer was present.

21. On 20 January 2009 the investigating judge heard evidence from the applicant's son H.G and his older daughter M.G. The applicant's defence lawyer was present.

22. On 21 January 2009 the investigating judge heard evidence from the applicant's younger daughter Z.G. Neither the applicant nor his defence lawyer was present.

23. On 26 January 2009 the Zagreb State Attorney's Office indicted the applicant before the Zagreb Municipal Criminal Court (*Općinski kazneni sud u Zagrebu*, hereinafter "the Municipal Court") for criminal offences: four counts of domestic violence as defined in Article 215a of the Criminal Code, perpetrated against his former spouse, his two daughters and his son;

and one count of child neglect and abuse as defined in Article 213 of the Criminal Code, committed against his minor daughter Z.G. According to the indictment, these offences were perpetrated in the period between February 2005 and 3 November 2008.

24. On 10 February 2009 the Municipal Court ordered a psychiatric assessment of the applicant.

25. On 23 February 2009 the applicant submitted an additional written defence.

26. On 10 March 2009 a psychiatrist submitted a report on the applicant, finding that at the time of the alleged offences his capacity to understand his actions had been reduced, but not significantly.

27. On 11 March 2009 the applicant submitted an additional written defence.

28. On 17 March 2009 the applicant submitted his written “closing arguments”.

29. At a hearing held before the Municipal Court on 24 March 2009, the applicant and three witnesses gave evidence.

30. On 19 May 2009 the applicant submitted an additional written defence.

31. Further hearings were held on 2 and 23 June, and on 7 and 14 July 2009. Several witnesses and an expert in psychiatry gave evidence.

32. On 15 June 2009 the applicant asked the court to allow him to consult the case file. His request was granted.

33. By a judgment of 14 July 2009, the Municipal Court found the applicant guilty of one count of child neglect and abuse in respect of his then minor daughter Z.G. and imposed a sentence of ten months’ imprisonment. He was also found guilty of four counts of domestic violence in total in respect of: his daughter Z.G., for which a prison term of six months was imposed; his daughter M.G., for which a prison term of nine months was imposed; his son H.G., for which a prison term of seven months was imposed; and his former spouse Mi.G., for which a prison term of one year was imposed. At the same time his suspended sentence of two years which had been imposed in a previous set of criminal proceedings was revoked (see paragraph 5 above), and he was sentenced cumulatively to five years’ imprisonment. A security measure of compulsory treatment for alcohol addiction was also imposed on him. The relevant part of the judgment read:

“The accused, Miljenko Galović, ... is guilty in that in the period between February 2005 and 3 November 2008 in ... , in the flat where he lived in the same household with his daughter Z., a minor, ..., adult daughter M. ... and adult son H., as the common-law spouse of Mi.G., [while] frequently under the influence of alcohol in the presence of Z., a minor, even though he knew that he could put her psycho-physical development at risk, he was verbally and physically assaulting his spouse Mi. and adult children, in that he was calling his common-law spouse ugly names: ‘whore, slut’, and cursing her mother, threatening to kill and sell her, and was physically

attacking her by slapping her, pulling her hair and throwing her to the ground, all this in the presence of Z., a minor, and his daughter M. and son H., and [was threatening to] throw his common-law spouse Mi. and the children out of the flat, and threatening to kill them, and on one occasion in December 2007 he took a kitchen knife and put it to the throat of his common-law spouse Mi. and told her that she had to send the agents of the [prosecuting authorities for organised crime] to search for him in bars, and he charged at [his common-law spouse] while brandishing the knife, while he insulted his daughter M. by telling her that she was a ‘whore, slut and a whore from Moslavina’, and to go to her lover, and he also insulted his son H. by telling him that he was ‘an imbecile, an idiot’, and cursed his mother, and said to him ‘give me a blowjob’, and at the same time he pushed H. This caused H. to move out of the flat at the beginning of 2007. [The accused] was frequently telling Z., a minor, that she was a ‘fat pig’, that ‘nobody would fuck her’, and that she was ‘a fat slut’. He grabbed her by the head and pushed her out of the flat, and continued to treat Z. in the same manner when she became an adult ... This behaviour culminated in [the events] on 3 November 2008 when the accused verbally assaulted his common-law spouse Mi. and daughter M. by telling them that they were ‘whores and sluts’, and when his common-law spouse Mi. stayed in the flat with him alone he verbally assaulted her again by telling her that she was a whore and that he had been fired because of her, [and] that he would throw her out of the house and kill her. He then physically assaulted her, in that he grabbed her hair, threw her onto a bed and hit her on the head, and continued to insult her by telling her that she was a ‘stupid whore from Moslavina and Zagorje’. Those blows made her ear bleed, and [the accused] threatened her by saying that if she called the police then he would kill her. When their daughter M. came home on the same day he entered her room and said to her ‘slut, whore, I lost my job because of you, get out of the house’, after which he followed her around the house and continued to insult her. This behaviour caused frequent police interventions and the accused, through his behaviour, put the proper psycho-physical development of his minor daughter Z. at risk. [Z.] is in psychiatric treatment owing to the accused’s behaviour ... while [his behaviour] caused his daughter M., son H. and common-law spouse Mi. to fear for their life and health [and] to experience anxiety [in this respect].

...

In the course of the proceedings, the court inspected ... record of examination of blood alcohol [of 4 November 2008]..., the Zagreb Minor Offences Court judgment [of 4 November 2008] ..., medical documentation concerning Mi.G. [relating to the incident of 3 November 2008]...

...

In relation to the criminal offences of domestic violence from Article 215a of the Criminal Code committed against Z.G., M.G., Mi.G and H.G., the court has established that in the incriminating period the [applicant], through his extremely rude, aggressive and ruthless behaviour, put the members of his family in a humiliating position by verbally and physically endangering them, attacking, threatening, which transpires from the statements of all heard witnesses and from the material evidence in the case file. The gravity of the [applicant’s] behaviour is also visible from the fact that [his family members] have been suffering such behaviour since 1995, that his older daughter M.G. said that she thought that [his conduct] had not been punishable as long as he was not beating them, and the fact that the victims called the police only when ‘the water came to their neck’ since they are in permanent fear due to the aggressive behaviour of the [applicant]. Not even a whole series of minor offence convictions, nor a previous criminal conviction for the same criminal offences did not result in a change in the [applicant’s] behaviour, but instead it

culminated on 3 November 2008 when Mi.G. left the family home in fear of her own life.

...

The [above] prison penalty shall include the period [the applicant] had served on the basis of the Zagreb Minor Offences Court's decision [of 10 January 2008] between 11 and 16 January 2008 and [on the basis of its decision of 17 November 2008] between 5 November until 2 December 2008 ..."

34. The first-instance judgment was served on the applicant's lawyer E.H. on 13 August 2009.

35. The applicant remained in detention.

36. On 19 August 2009 the applicant appealed against the first-instance judgment and asked that a hearing be held. He complained at length about the wrongful assessment of the facts and application of the domestic law in his case.

37. By a letter of the same date, which was received by the first instance court a day later, the applicant revoked the power of attorney which had been issued to E.H., his lawyer.

38. On 24 August 2009 the applicant sent a letter to the Municipal Court stating that he needed a new defence lawyer. He submitted a list of eight lawyers and asked to be able to contact them by telephone. This letter was received by the Municipal Court on 25 August 2009.

39. By another letter of 25 August 2009, the applicant informed the Municipal Court that he had revoked the power of attorney given to E.H. and asked to be allowed to contact four other lawyers by telephone. That letter was received by the Municipal Court on 26 August 2009. The applicant made the same request in a letter of 26 August 2009.

40. On 31 August 2009 E.H. lodged an appeal against the first-instance judgment on the applicant's behalf.

41. On 7 September 2009 the applicant asked for permission to consult part of the case file.

42. On 9 September 2009 the President of the Municipal Court appointed S.A. to act as a defence lawyer for the applicant and sent the applicant a copy of the part of the case file which he had requested to consult.

43. On 14 September the applicant informed the Municipal Court that he did not trust S.A., and he complained that a request which he had made to contact three lawyers by telephone had not been complied with properly. He explained that he had written to two lawyers and sent letters by registered mail but had not received any confirmation of receipt. As regards the third lawyer, the number on which he had been allowed to call him had been incorrect.

44. On 16 September the applicant contacted E.H. again. On the same day D.L., another lawyer, visited the applicant in prison.

45. On 23 September 2009 the presiding judge of the trial panel allowed the applicant to contact two lawyers.

46. On 27 September 2009 the applicant himself lodged an additional appeal against his conviction.

47. On 29 September 2009 the applicant contacted a lawyer J.M.

48. On 7 October 2009 two lawyers, J.M. and A.D. visited the applicant in prison.

49. On 23 October 2009 the president of the trial panel of the Municipal Court informed Zagreb County Court (*Županijski sud u Zagrebu*, hereinafter “the County Court”) that the applicant had asked to consult the case file.

50. The County Court informed only the applicant’s former counsel E.H. of a session scheduled for 2 November 2009 at which the appeal was to be examined.

51. By a judgment of 2 November 2009 issued at that session, the County Court examined all appeals lodged both by the applicant and his defence lawyer E.H. It accepted in part their arguments and reduced his sentence to four years and three months’ imprisonment, without holding a hearing and in the absence of the applicant and the lawyers E.H. and S.A. The remainder of the appeals was dismissed, and in that part the first-instance judgment was upheld.

52. On 19 November 2009 the applicant was taken from the detention facility to prison, where he started to serve his sentence.

53. The applicant then lodged a request for extraordinary review of a final judgment (*zahtjev za izvanredno preispitivanje pravomoćne presude*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*). He argued, *inter alia*, that he had not been notified of the session at which the County Court had examined his appeal and issued its judgment, even though under the rules of criminal procedure an accused who demanded a hearing before a second-instance court had to be informed of such a session. Only his former counsel E.H. had been notified, even though he had no longer represented him at the time.

54. On 20 January 2010 the Supreme Court quashed the second-instance judgment and remitted the case. It held that the County Court had breached the rules of criminal procedure by informing the applicant’s former defence lawyer E.H. of the session of 2 November 2009, rather than his current defence lawyer S.A., who had been officially appointed.

55. On 5 February 2010 the applicant was transferred from prison to a detention facility in Zagreb. On the same day, the decision of the Supreme Court of 20 January 2010 was served on him.

56. On 9 February 2010 the applicant asked the County Court to be allowed to contact five lawyers by telephone. That request was registered with the County Court on 10 February 2010 and forwarded to the Municipal Court, which received it on 15 February 2010.

57. In the meantime, on 12 February 2010, the County Court had notified the applicant and his officially appointed defence lawyer S.A. that the session before that court, at which the applicant's appeal was to be examined, was scheduled for 16 February 2010.

58. By a letter received by the County Court a day before the session, the applicant asked the court to adjourn the session for a week and to grant him leave to represent himself. He explained that he had been informed of the session only four days in advance, on the afternoon of Friday, 12 February 2010, and thus had not had enough time to prepare his defence or contact anyone. He stressed that while in prison, he had written to three lawyers. At the same time, he asked for leave to represent himself, since he had "participated in the events [in respect of which] he had been charged" and was an administrative lawyer by profession. As regards the lawyer S.A., the applicant said that he did not know him and that he had never talked to him about his case. He reiterated that he had asked to be present at the session in order to give more details about the relevant facts and his former spouse's motives for allegedly giving false statements and manipulating their children. He also enclosed submissions on the charges against him.

59. On 16 February 2010 the presiding judge of the trial panel of the Municipal Court allowed the applicant to contact the five lawyers mentioned in his request by telephone.

60. The session of the County Court was held as scheduled on 16 February 2010. The applicant, who was still in detention at the time, was not invited and his officially appointed defence lawyer S.A. was not present. The competent State Attorney was not present at the session either.

61. After the session, the County Court issued a judgment identical to its previous judgment of 2 November 2009 – it reduced the applicant's sentence to four years and three months' imprisonment and dismissed the remainder of his appeal. The relevant part of that judgment reads as follows:

"The presence of the accused – Miljenko Galović, who is in detention and is represented by counsel – at the session before the panel was not secured, because the panel considered that his presence had not been necessary."

62. On 17 February 2010 the applicant himself lodged another request for extraordinary review of a final judgment with the Supreme Court, which he supplemented on 30 March and on 18 and 22 April 2010. He argued, *inter alia*, that: (a) he had been notified of the County Court's session of 16 February 2010 only four days in advance, and thus had not had enough time to prepare his defence; (b) his officially appointed counsel had never contacted him and had not attended the session; (c) due to time constraints and transfers from prison to a detention facility, he had not had enough time to hire counsel of his own choosing to represent him before the County Court; (d) he had not been invited to the session before the appeal court; and (e) in view of his previous convictions for domestic violence in proceedings on indictment and in several sets of minor-offence proceedings, his criminal

conviction in the impugned judgment constituted a second conviction for the same offence.

63. By a judgment of 27 April 2010, the Supreme Court dismissed the applicant’s request. It addressed only the issue of *ne bis in idem* in connection with the Zagreb Minor Offences Court’s judgment of 17 November 2008 (see paragraph 13 above). The relevant part of the judgment reads:

“The factual background of the minor offence of which [the applicant] was found guilty by the judgment of the Minor Offences Court is not the same as the factual background of the criminal offences of which [he] had been found guilty by a final judgment of the Zagreb Municipal Criminal Court of 14 July 2009 ... Miljenko Galović has been found guilty of one criminal offence under Article 213 §§ 1 and 2 of the Criminal Code and four criminal offences under Article 215a of the Criminal Code committed in the period between February 2005 and 3 November 2008. The fact that [his] behaviour also constituted a minor offence under section 18(1) of the Protection Against Domestic Violence Act in respect of the same victims during that same period – [a minor offence] of which he had been found guilty by a judgment of the Minor Offences Court – cannot be seen as a matter which has already been judged, and there has therefore been no violation of the Criminal Code under Article 368 § 3 of the Code on Criminal Procedure.”

64. By a decision of 27 January 2011, the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared a subsequent constitutional complaint lodged by the applicant inadmissible. It held that the Supreme Court’s decision following a request for extraordinary review of a final judgment was not susceptible to constitutional review.

65. On 16 March 2012 the applicant was conditionally released from prison.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

66. The relevant domestic law as regards the absence of an accused in criminal proceedings from the sessions of an appeal panel is set out in the case of *Arps v. Croatia*, no. 23444/12, §§ 12-15, 25 October 2016.

67. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/1997 with subsequent amendments), as in force at the material time, read as follows:

Neglect or abuse of a child or a minor
Article 213

“(1) A parent, adoptive parent, guardian or other individual who grossly neglects his or her duties to care for or raise a child or minor shall be punished by imprisonment for six months to five years.

(2) The penalty referred to in paragraph 1 of this Article shall be imposed on a parent, adoptive parent, guardian or other individual who abuses a child or minor;

[who] forces [the child] to perform work unsuitable for his or her age, or to work excessively, or to beg; [who], out of greed, induces [the child] to behave in a manner harmful to his or her development; or [who] puts [the child] in danger by [engaging in] dangerous activities or in some other way.”

Domestic violence
Article 215a

“A family member who, through violence, ill-treatment or particularly contemptuous behaviour, places another family member in a humiliating position shall be sentenced to imprisonment for a term of between six months and five years.”

68. The Protection against Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji*, Official Gazette no. 116/2013), *inter alia*, defines the minor offence of domestic violence and provides sanctions which may be imposed on those convicted of that offence. The relevant provisions read:

Section 4

“Domestic violence is:

- every application of physical or psychological force against a person’s integrity;
- all conduct by a family member capable of causing fear of physical or psychological pain;
- causing [a person to] feel scared or personally threatened, or [causing] injury to a person’s dignity;
- physical assault, irrespective of whether it results in bodily injury;
- verbal assaults, insults, swearing, name-calling or other forms of serious harassment;
- sexual harassment;
- stalking and all other forms of harassment;
- unlawfully isolating [a person] or restricting a person’s freedom of movement or communication with third parties;
- damaging or destroying assets or attempting to do this.”

Section 18

“(1) A family member who commits [an act of] domestic violence under section 4 of this Act shall be fined between 1,000 and 10,000 Croatian kunas (HRK) for a minor offence or punished by imprisonment for up to 60 days.

(2) A family member who repeats [an act of] domestic violence shall be fined at least HRK 5,000 for a minor offence or punished by imprisonment for at least 15 days.

(3) An adult family member who commits [an act of] domestic violence in the presence of a child or a minor shall be fined at least HRK 6,000 for a minor offence or punished by imprisonment for at least 30 days.

(4) An adult family member who repeats [an act of] domestic violence under subsection 3 of this section shall be fined at least HRK 7,000 for a minor offence or punished by imprisonment for at least 40 days.

(5) When violence under subsection 3 of this section is committed to the detriment of a child or a minor, the perpetrator shall be fined at least HRK 7,000 for a minor offence or punished by imprisonment of at least 40 days.”

69. In its judgment III Kr 50/11-4 of 17 January 2013, the Supreme Court held as follows:

“The convicted person is incorrect in claiming that the conditions for instituting criminal proceedings against him had not been met because he had previously been convicted for the same event in minor-offence proceedings...

Contrary to what is claimed by the convicted person, it is necessary to stress that he was found guilty of a continuous criminal offence of violent behaviour in the family as defined in Article 215a of the Criminal Code, the acts of which had been performed a number of times in that he verbally attacked the victim, as well as physically in the period between 26 March 2002 and 25 September 2004, so that he would hit her with his hands all over her body and head, push her [so that] she fell over, and she was otherwise disabled and walking with crutches, and two times he hit her with a chair on her head and body.

In connection with such incrimination, it is necessary to stress that violent behaviour of the convicted person has been performed throughout the criminalizing period and even outside the three instances in relation to which medical documentation has been obtained.

...

...in relation to the event which represents the very end of the continuous criminal offence and relates to 25 September 2004, medical documentation has been obtained and the convicted person was found guilty of domestic violence in minor-offence proceedings...

In the Supreme Court’s opinion, the present case concerns a continuous criminal offence as defined in Article 215a of the Criminal Code, which consists of several instances of domestic violence to which the victim had been exposed almost on a daily basis, thereby putting her in a humiliating position; therefore the K. Minor Offence Court’s judgment relating to the event of 25 September 2004 by no means represents a court decision on the same matter which the criminal courts were called upon to decide in regular criminal proceedings. This is because the minor offence proceedings established the convicted person’s guilt only in relation to one single act of domestic violence committed only on 24 September 2004, whereas the remaining acts [of domestic violence] and the forms [thereof] ... are not even mentioned in the description of the minor offence, so already for that reasons this [case] cannot concern a *res judicata*, as wrongly argued by the convicted person...”

II. EUROPEAN UNION LAW

70. The relevant case-law of the Court of Justice of the European Union (CJEU) has been cited in *Bajčić v. Croatia*, no. 67334/13, § 15, 8 October 2020. See also CJEU judgment in Joined cases C-596/16 *Enzo di Puma* and C-597/16 *Anotnio Zecca* adopted on 20 March 2018.

III. INTERNATIONAL LAW

71. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”), which came into force in respect of Croatia on 1 October 2018, insofar as relevant, provides as follows:

Article 18 § 1

“Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.”

Article 45 § 1

“Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 3 (B) AND (C) OF THE CONVENTION

72. The applicant complained that in the proceedings before the County Court he had not had adequate time for the preparation of his defence, and could not defend himself either in person or with the assistance of a lawyer because he had been informed of the session of 16 February 2010 only four days in advance. Also, he had not been given an opportunity to attend that session. He relied on Article 6 §§ 1 and 3 (b) and (c) of the Convention, the relevant part of which 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:

...

(b) to have adequate time and facilities for the preparation of his defence;

(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

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

B. Merits

1. Article 6 § 3(b) and (c) – legal representation in the appeal proceedings and adequate time and facilities to prepare a defence

74. The Court considers that the applicant's complaint under Article 6 § 3 (b) of the Convention is closely related to his complaint concerning his right to be represented by a lawyer at the appeal stage of proceedings. Consequently, the issues of whether his right to adequate time and facilities to prepare his defence and his right to be represented by a lawyer were respected need to be examined together.

(a) The parties' arguments

75. The applicant argued that, owing to the brevity of the period between his being informed of the appeal session and that session actually taking place, he had not been able to hire a lawyer and adequately prepare his defence.

76. The Government maintained that the applicant had had sufficient time and facilities to prepare his defence in the appeal proceedings, since his chosen lawyer, E.H., had received the first-instance judgment on 13 August 2009 and both the applicant and E.H. had lodged appeals against that judgment. Once the applicant had revoked the power of attorney in respect of E.H., the national courts had appointed a State-funded lawyer for the applicant and had also granted his requests to contact other lawyers. When the Supreme Court had quashed the second-instance judgment and remitted the case to the appeal court, the appeal court had had to decide on the same appeals it had already examined, that is to say the applicant's and E.H.'s appeals lodged in August 2009.

77. The national courts had also granted the applicant's repeated requests to contact other lawyers and had allowed three lawyers to visit him in prison. The applicant was responsible for the fact that he had not hired any other lawyer.

78. The applicant had been informed of the appeal court's session four days in advance, and given the fact that the appeal court had had to decide on the appeals lodged in August 2009, that period could not be regarded as insufficient for him to prepare his defence. Moreover, when the applicant had asked for the appeal court's session to be adjourned for seven days, he had not explained what the purpose of that adjournment was.

(b) The Court's assessment

(i) General principles

79. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule, but must depend on the circumstances of the particular case.

The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, 13 September 2016).

80. 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 an isolated consideration of one particular aspect or one particular incident, although it cannot be excluded 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. In evaluating the overall fairness of the proceedings, the Court will take into account, if appropriate, the minimum rights listed in Article 6 § 3, which exemplify the requirements of a fair trial in respect of typical procedural situations which arise in criminal cases. They can therefore be viewed as specific aspects of the concept of a fair trial in criminal proceedings in Article 6 § 1. However, those minimum rights are not aims in themselves: their intrinsic aim is always to contribute to ensuring the fairness of the criminal proceedings as a whole (*ibid.*, § 251).

81. Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence", and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the ability to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Mayzit v. Russia*, no. 63378/00, § 78, 20 January 2005; *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008; *Gregačević v. Croatia*, no. 58331/09, § 51, 10 July 2012; and *Chorniy v. Ukraine*, no. 35227/06, § 37, 16 May 2013).

82. When assessing whether the accused had adequate time for the preparation of his defence, particular regard has to be had to the nature of the proceedings, as well as the complexity of the case and the stage of the proceedings (see *Gregačević*, cited above, § 51, and *Albert and Le Compte v. Belgium*, 10 February 1983, § 41, Series A no. 58). In this connection, the Court notes that the guarantees of Article 6 § 3 (b) go beyond trials, and extend to all stages of court proceedings (see *D.M.T. and D.K.I. v. Bulgaria*, no. 29476/06, § 81, 24 July 2012, and *Chorniy*, cited above, § 38).

83. As regards the right to a lawyer, 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 *Salduz v. Turkey* [GC], no. 36391/02, § 51, ECHR 2008; *Dvorski v. Croatia* [GC], no. 25703/11, § 76, ECHR 2015; and *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 112, 12 May 2017 (extracts)). However, assigning counsel does not in itself ensure the effectiveness of the assistance counsel may provide to his client.

Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between a defendant and his counsel, whether appointed under a legal-aid scheme or privately financed. The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective legal assistance is manifest or sufficiently brought to their attention in another way (see *Czekalla v. Portugal*, no. 38830/97, § 60, ECHR 2002-VIII, and *Orlov v. Russia*, no. 29652/04, § 108, 21 June 2011).

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

84. The applicant's complaints concern the appeal stage of the proceedings and refer to his alleged inability to prepare his defence and hire a lawyer in the short period between his being informed of the appeal court's session and the session actually taking place. The Court notes that the first-instance judgment was issued on 14 July 2009 (see paragraph 33 above) and it was served on E.H., the defence counsel chosen by the applicant (contrast with *Chorniy*, cited above, § 41), on 13 August 2009. Both the applicant and E.H. lodged appeals (see paragraphs 36 and 40 above). The applicant also revoked his power of attorney in respect of E.H. Subsequently, he made several requests to contact other lawyers.

85. The Court notes that the national courts appointed a State-funded lawyer, S.A., for the applicant on 9 September 2009 (see paragraph 42 above), after the applicant had revoked the power of attorney in respect of E.H. The applicant complained that he did not trust S.A. and asked the court to allow him to contact other lawyers (see paragraph 43 above). His request was granted – he contacted several other lawyers and three lawyers visited him in prison (see paragraphs 44, 47 and 48 above). However, the applicant did not hire another lawyer.

86. On 2 November 2009 the appeal court dismissed the appeals lodged by the applicant and E.H. and upheld the first-instance judgment (see paragraph 51 above). On 20 January 2010 the Supreme Court quashed the appeal court's judgment and remitted the case. It is to be stressed that the appeal court was to decide on the appeals lodged by the applicant and E.H. on 19 and 31 August 2009 respectively, and that at the time when the Supreme Court remitted the case to the appeal court the applicant was not allowed to lodge further appeals or supplement his previous appeals. There is no indication, and the applicant has never made any allegations to that effect, that he did not have sufficient time and facilities to prepare his appeal, or that he did not have the services of a lawyer in connection with the appeal, or that he was hindered in preparing his appeal in any other respect (compare *Chorniy*, cited above, § 40).

87. The Court would also stress that during the entire trial before the first-instance court, the applicant was represented by E.H., a lawyer of his own choosing, and had ample time and opportunity to confer with that lawyer and prepare his defence (contrast *Falcão dos Santos v. Portugal*, no. 50002/08, § 44, 3 July 2012). There is also no indication that the applicant was limited in terms of how many meetings he had with his chosen lawyer E.H. at any stage of the proceedings or how long those meetings were (compare *Lambin v. Russia*, no. 12668/08, § 45, 21 November 2017).

88. Therefore, at the stage when the Supreme Court remitted the case to the appeal court for fresh examination of the applicant's and E.H.'s appeals (see paragraph 54 above), the applicant had already benefitted from the services of his chosen lawyer and had had sufficient time to prepare his defence. In this connection, the Court notes that the applicant, with the assistance of his lawyer, put forward his defence before the investigating judge (see paragraph 19 above), at the trial before the first-instance court (see paragraph 30 above), and on three occasions submitted additional written defence arguments (see paragraphs 25, 27 and 28 above). The national courts gave the applicant sufficient opportunity to hire another lawyer, but he failed to do so.

89. In his oral and written defence, as well as in his appeals, the applicant analysed the case in detail and referred extensively to all the main items of evidence, including expert opinions and witness testimonies (see paragraphs 19, 25, 27-30 and 36 above; also compare *Lambin*, cited above, § 44).

90. Given the particular circumstances of the case, the Court considers that the brevity of the period between the applicant being informed of the appeal court session and that session actually taking place did not restrict his right to adequate time and facilities to prepare his defence or his right to be legally represented in the criminal proceedings against him to such an extent that it could be said that he did not have the benefit of a fair trial.

91. There has accordingly been no violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention in that respect.

2. *Article 6 § 3 (c) – the applicant's absence from the session before the appeal court*

(a) **The parties' arguments**

92. The applicant argued that his absence from the appeal court's session held on 16 February 2010 was in breach of his right to defend himself in person.

93. The Government argued that under the relevant domestic law the appellate court had had the discretion to decide whether to allow the defendant to attend the session of the appeal panel. Furthermore, since the

prosecution had not appealed against the first-instance judgment and had not been summoned to the session of the appeal panel, the Government were of the opinion that the applicant had not been placed in a disadvantageous position *vis-à-vis* the prosecution. Moreover, the applicant's appeal had been very detailed and had mainly concerned the assessment of the facts. Given all these circumstances, the County Court had had no reason to hear him in person.

(b) The Court's assessment

94. The Court notes that it has already found a violation of Article 6 §§ 1 and 3 (c) of the Convention in cases against Croatia raising a similar issue to that in the present case (see *Zahirović v. Croatia*, no. 58590/11, §§ 58-64, 25 April 2013; *Lonić v. Croatia*, no. 8067/12, §§ 94-102, 4 December 2014; and *Arps v. Croatia*, no. 23444/12, §§ 24-29, 25 October 2016).

95. In the above-cited cases, the Court addressed the same arguments as those put forward by the Government in the present case. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

96. There has accordingly been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

97. The applicant complained that he had been tried twice for the same offence. He relied on Article 4 of Protocol No. 7 to the Convention, which reads as follows:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.”

A. Admissibility

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

B. Merits*1. The parties' arguments*

99. The applicant maintained that he had been punished twice for the same offence by two judgments of the Zagreb Minor Offences Court (see paragraphs 9 and 13 above) and the judgment of the Municipal Court of 14 July 2009 (see paragraph 33 above). He argued that the minor-offence proceedings and the proceedings on indictment had had the same purpose, because the minor offence under section 4 of the Protection against Domestic Violence Act and the criminal offences under Article 215a of the Criminal Code both concerned violent behaviour within the family covering the same forms of violence and harassment. The purpose of both offences was to establish that violent behaviour was unacceptable, unlawful and banned.

100. The applicant also contended that the evidence had been presented and assessed separately in each set of proceedings, and that the sanctions imposed on him in the minor-offence proceedings had not been deducted from the penalty ultimately imposed on him in the proceedings on indictment.

101. The Government concentrated their arguments on the applicant's conviction in the minor-offence proceedings of 17 November 2008 (see paragraph 9 above). They maintained that his conviction in the proceedings on indictment for four counts of domestic violence and one count of child neglect and abuse over a period of almost three years (from 2005 to 3 November 2008) could not be seen as being the same as his conviction in minor-offence proceedings for one count of domestic violence in respect of the events of 3 and 4 November 2008. In the proceedings on indictment, the applicant had been convicted of numerous violent acts consisting of insults, threats and physical assaults committed over a longer period of time in respect of four members of his family, whereas in the minor-offence proceedings he had been convicted of a single offence committed in respect of two members of his family over two consecutive days.

102. The Government stressed that the factual background of the event of 3 November 2008 in respect of which the applicant had been convicted in the proceedings on indictment was not the same as the factual background in respect of which he had been convicted in the minor-offence proceedings. In the latter scenario, the applicant had been convicted because on 3 November 2008, after verbally insulting his former spouse and his daughter M.G., he had slapped his former spouse several times on her left cheek and ear and thus caused her less serious bodily injury (contusions to the head and bleeding from the ear). The applicant would have been convicted in the proceedings on indictment, irrespective of the events of 3 November 2008 –the verbal assault on his daughter M.G. and the verbal and physical assault on his former spouse Mi.G. – because it was not

necessary to specify each and every verbal or physical assault on a family member to prove the existence of the criminal offence of domestic violence.

103. The Government contended that the two sets of proceedings had been closely related in nature and time and had amounted to a single complementary response by the State to the applicant’s unlawful conduct. The purpose of the minor-offence proceedings had been to punish each incident separately, whereas the purpose of the criminal proceedings on indictment had been to protect family members from the violence to which they had been exposed over a longer period.

104. The Government pointed out that the same documentary evidence had been used in both sets of proceedings, whereas the trial court in the proceedings on indictment had been obliged to hear all witnesses in person, and could not use the witness statements which had been given in the minor-offence proceedings. Lastly, the applicant’s sentence from the minor-offence proceedings had been deducted from his sentence in the proceedings on indictment.

2. *The Court’s assessment*

(a) **Whether all the proceedings concerned were criminal in nature**

105. In comparable cases against Croatia involving minor offences, the Court has held, on the basis of the “*Engel* criteria” (see *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22), that minor-offence proceedings were “criminal” in nature for the purposes of Article 4 of Protocol No. 7 (see *Bajčić v. Croatia*, no. 67334/13, §§ 27-28, 8 October 2020; and, in the context of an Article 6 complaint, *Marčan v. Croatia*, no. 40820/12, § 33, 10 July 2014).

106. Taking into consideration the nature of the offence in question, together with the severity of the penalty, the Court sees no reason to depart from the conclusion reached in those previous cases and holds that both sets of proceedings in the present case concerned a “criminal” matter within the autonomous meaning of Article 4 of Protocol No. 7.

(b) **Whether the offences for which the applicant was prosecuted were the same (*idem*)**

107. The notion of the “same offence” – the *idem* element of the *ne bis in idem* principle in Article 4 of Protocol No. 7 – was clarified in *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, §§ 78-84, ECHR 2009). Following the approach adopted in that judgment, it is clear that the determination as to whether the offences in question were the same (*idem*) depends on a facts-based assessment (*ibid.*, § 84), rather than, for example, a formal assessment consisting in comparing the “essential elements” of the offences. The prohibition in Article 4 of Protocol No. 7 to the Convention concerns the prosecution or trial of a second “offence” in so far as the latter

arises from identical facts or facts which are substantially the same (ibid., § 82). In the Court's view, statements of fact concerning both the offence for which the applicant has already been tried and the offence of which he or she stands accused are an appropriate starting-point for its determination of the issue whether the facts in both proceedings were identical or substantially the same (see, in this connection, *Sergey Zolotukhin*, cited above, § 83). The Court's inquiry should therefore focus on those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute criminal proceedings (ibid., § 84).

108. In the present case, the applicant was first convicted in minor-offence proceedings in respect of two separate incidents – by judgments of 16 January 2008 in respect of an incident which occurred on 10 January 2008 (see paragraph 9 above), and then by the judgment of 17 November 2008 for the incident of 3 November 2008 (see paragraph 13 above).

109. Subsequently, in the proceedings on indictment, the applicant was charged with and, on 14 July 2009 found guilty of, four counts of domestic violence committed against his family members in the period between February 2005 and November 2008. The Court notes that, while the applicant's conviction in the proceedings on indictment did not expressly refer to any specific event of 10 January 2008, it clearly encompassed the period between February 2005 and November 2008, thereby implicitly covering all the incidents that might have happened during that time.

110. On the other hand, the criminal court judgment expressly referred to the event of 3 November 2008 in respect of which the applicant had been found guilty in the minor-offence proceedings on 17 November 2008 (see paragraph 13 above). Both the decision issued in the minor-offence proceedings of 17 November 2008 and the judgment issued in the proceedings on indictment of 14 July 2009 refer to the same words spoken by the applicant to his daughter and his former spouse, and to the applicant's physical assault on the latter. In both decisions, those events are described in almost the same terms, and they clearly refer to the same events of 3 November 2008.

111. At the same time, the Court notes that the indictment in the criminal proceedings contained a number of additional facts not encompassed by the decision in the impugned set of minor-offence proceedings, namely acts of domestic violence towards the applicant's younger daughter Z.G. and his son H.G., as well as, most notably, that the applicant's violent behaviour occurred over a longer period of time (see paragraph 23 above). The proceedings on indictment therefore concerned a criminal offence of domestic violence as defined in Article 215a of the Criminal Code (see paragraph 69 above). In fact, the criminal conviction enumerated several examples of the applicant's violent behaviour towards

his family members and expressly stated that such conduct culminated in the incident of 3 November 2008 (see paragraph 33 above). It transpires that the inclusion of the incident of 3 November 2008 served to show only one of the instances – notably, the most violent one – of the applicant’s reprehensible behaviour which had persisted over a period of some three years and had caused his family members fear, anxiety and risk for their life (see paragraph 33 above). In other words, the domestic courts sought to show that the applicant’s conduct, which had been sanctioned on a number of occasions in minor-offence proceedings, eventually reached the threshold of seriousness so as to be considered and punished under criminal law.

112. The Court notes that the facts for which the applicant had already been convicted in the two impugned sets of minor-offence proceedings formed an integral part of the subsequent proceedings on indictment. The Court thus accepts that the facts in the subsequent criminal proceedings had in part been identical to the facts in the two sets of minor-offence proceedings complained of. In view of this, any possible arbitrary treatment by the judicial system in breach of the *ne bis in idem* principle in those proceedings must be eliminated. The Court will therefore proceed to examine whether there had been a duplication (*bis*) of the proceedings in breach of Article 4 of Protocol No. 7.

(c) Whether there was duplication of proceedings (*bis*)

113. As the Grand Chamber explained in *A and B v. Norway* ([GC], nos. 24130/11 and 29758/11, § 130, 15 November 2016), Article 4 of Protocol No. 7 does not preclude the conduct of dual proceedings, provided that certain conditions are fulfilled. In particular, for the Court to be satisfied that there is no duplication of trial or punishment (*bis*) as proscribed by Article 4 of Protocol No. 7, the respondent State must demonstrate convincingly that the dual proceedings in question were “sufficiently closely connected in substance and in time”. In other words, it must be shown that they were combined in an integrated manner so as to form a coherent whole. This implies not only that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected (*ibid.*, § 130). As regards the conditions to be satisfied in order for dual criminal and administrative proceedings to be regarded as sufficiently connected in substance and in time and thus compatible with the *bis* criterion in Article 4 of Protocol No. 7, the material factors for determining whether there was a sufficiently close connection in substance include:

– whether the different proceedings pursue complementary purposes and thus addressed, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;

– whether the duality of proceedings concerned was a foreseeable consequence, both in law and in practice, of the same impugned conduct (*idem*);

– whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any additional disadvantages resulting from duplication of proceedings and in particular duplication in the collection as well as the assessment of the evidence, notably through adequate interaction between the various competent authorities to ensure that the establishment of the facts in one set of proceedings is replicated in the other;

– and, above all, whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to prevent the individual concerned from being in the end made to bear an excessive burden; this latter risk is least likely to be present where there is in place an offsetting mechanism designed to ensure that the overall amount of any penalties imposed is proportionate (*ibid.*, §§ 131-32).

114. At the outset the Court reiterates that the States are under a positive obligation under Articles 3 and 8 of the Convention to provide and maintain an adequate legal framework affording protection against acts of domestic violence (see *Ž.B. v. Croatia*, no. 47666/13, §§ 47 and 49, 11 July 2017). With regard to the adequacy of the legal framework for the protection from domestic violence, the Court notes that there is a common understanding in the relevant international materials that comprehensive legal and other measures are necessary to provide victims of domestic violence with effective protection (see, for example, paragraph 71 above). These measures include, in particular, the criminalisation of acts of violence within the family by providing effective, proportionate and dissuasive sanctions (*ibid.*, § 51).

115. The Court further notes that the Contracting States have different approaches to the criminalisation of domestic violence in their legal systems. It has already held that the legislative solutions provided for under the Criminal Code and the Minor Offences Act applicable at the relevant time in Croatia did not appear to be contrary to the relevant international standards (see *Ž.B.*, cited above, §§ 38-39 and 56). The Court further reiterates that it was for the domestic authorities to assess the findings of fact and to decide, in accordance with the domestic law as interpreted by the national courts, how the applicant's conduct ought to be classified and prosecuted (see *Rohlina v. the Czech Republic*, [GC], no. 59552/08, § 55, ECHR 2015).

116. In that connection the Court observes that domestic violence is rarely a one-off incident; it usually encompasses cumulative and interlinked physical, psychological, sexual, emotional, verbal and financial abuse of a close family member or partner transcending circumstances of an individual case (see *Volodina v. Russia*, no. 41261/17, § 71, 9 July 2019). The

recurrence of successive episodes of violence within personal relationships or closed circuits represents the particular context and dynamics of domestic violence (see *ibid.*, § 86; and *Kurt v. Austria* [GC], no. 62903/15, § 164, 15 June 2021). Thus the Court has already recognised that domestic violence could be understood as a particular form of a continuous offence characterised by an ongoing pattern of behaviour (see *Rohlena*, cited above, § 72; and *Valiulienė v. Lithuania*, no. 33234/07, § 68, 26 March 2013) in which each individual incident forms a building block of a wider pattern.

117. In view of the above, the Court notes that the Croatian legislature at the material time opted to regulate the socially undesirable conduct of violent behaviour towards family members as an integrated dual process. One single act of domestic violence, which did not amount to some other criminal offence punishable under the Criminal Code, was to be sanctioned as a minor offence of domestic violence. Such a minor offence was predominantly incident-focused and covered a wider range of behaviours outside the boundaries of traditional criminal law. Where there was a pattern of such behaviour, the Criminal Code at the material time provided an additional option of bringing charges for the criminal offence of domestic violence as defined in Article 215a of the Criminal Code. The Supreme Court of Croatia has interpreted Article 215a of the Criminal Code, as in force at the material time, in similar circumstances to the present case, as a continuous offence seeking to address repeated and continuous behaviour in relationships (see paragraph 69 above; see also *Rohlena*, cited above, § 72).

118. The Court notes that the purpose of the minor-offence proceedings was to provide a prompt reaction to a particular incident of domestic violence that in itself did not amount to any criminal offence under the Criminal Code in order to timely and effectively prevent further escalation of violence within the family and to protect the victim. This is what has been done in the applicant's case on a number of separate occasions (see paragraphs 6, 7, 8, 9 and 13 above). Once the applicant's unlawful behaviour reached a certain level of severity, the proceedings on indictment were initiated against him, aimed at addressing an ongoing situation of violence in a comprehensive manner (see, *mutatis mutandis*, *A. v. Croatia*, no. 55164/08, § 76, 14 October 2010). The individual incidents sanctioned in two sets of minor-offence proceedings complained of, taken together with other incidents, demonstrated a pattern of behaviour and contributed to the assessment of the seriousness of the applicant's criminal conduct and only in their entirety did they reflect the cumulative impact on his victims. In these circumstances the Court has no cause to call into question the reasons for such partial duplication of the proceedings, which pursued the general interest of promptly and adequately reacting to domestic violence, that has particularly damaging effects on the victim, the family and society as a whole by gradually intensifying the State's response. The Court notes that such dual proceedings represented complementary response to socially

offensive conducts of domestic violence (compare and contrast *Nodet v. France*, no. 47342/14, § 48, 6 June 2019).

119. The Court would further stress that duplication of proceedings and penalties may be allowed only under conditions provided for and exhaustively defined by clear and precise rules allowing individuals to predict which acts or omissions were liable to be subject to such a duplication of proceedings and penalties, thereby ensuring that the right guaranteed by Article 4 of Protocol No. 7 is not called into question as such and legal certainty is preserved. As regards the question of whether duality of the proceedings had been foreseeable for the applicant, the Court notes that, having behaved violently towards close family members on a number of occasions, the applicant should have been aware that his conduct could have entailed consequences such as the institution of minor-offence proceedings for a particular individual incident under the Protection against Domestic Violence Act and criminal proceedings for continuous and repeated behaviour of domestic violence criminalised under the Criminal Code.

120. As to the manner of conducting the proceedings, the Court observes that the criminal court took note of all the previous minor-offence judgments against the applicant (see paragraph 33 above) and used certain documentary evidence from those proceedings (for example, the same record of examination of blood alcohol dated 4 November 2008; see paragraphs 13 and 33 above). The fact that the criminal court decided again to hear certain witnesses, such as Mi.G. and M.G. at the trial may be regarded as an inherent feature of proceedings on indictment and a requirement safeguarding the rights of the accused under Article 6 of the Convention. The Court therefore concludes that the interaction and coordination between the two courts was adequate and that the two sets of proceedings formed a coherent whole. (see, *a contrario*, *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, §§ 65-74, 30 April 2015, where the applicants had first been acquitted in criminal proceedings, and later on received severe administrative fines for the same conduct). Consequently, the applicant has not suffered a disadvantage associated with the duplication of proceedings, beyond what was strictly necessary.

121. As regards the sanctions imposed, the Court firstly notes that each of the applicant's minor-offence convictions took into account the penalty imposed on him in the previous minor-offence proceedings (see paragraphs 7, 9 and 13 above). Subsequently, the criminal court expressly acknowledged that the applicant had already been punished in five sets of minor offence proceedings. It also deducted from his sentence the period which the applicant had spent in detention on the basis of the two minor-offence convictions complained of, dated 10 January 2008 and 17 November 2008 (see paragraph 13 above). Consequently the domestic courts applied the principle of deduction and ensured that the overall

amount of penalties imposed on the applicant was proportionate to the seriousness of the offence concerned (compare *A and B*, cited above, § 144; and contrast *Glantz v. Finland*, no. 37394/11, § 61, 20 May 2014, and *Nykänen v. Finland*, no. 11828/11, § 51, 20 May 2014). It cannot therefore be said that the applicant was made to bear an excessive burden (see the relevant criteria set out in *A and B v. Norway*, cited at paragraph 113 above).

122. Finally, turning to the connection in time between the various sets of proceedings, the Court notes that the time element in the specific context of domestic violence bearing in mind its specific dynamics (see paragraph 116 above) takes on a particular meaning. What is important in this context is for the domestic criminal-law system to effectively deal with instances of domestic violence, individually and in their aggregate, by producing adequate deterrent effects capable of ensuring the effective prevention of unlawful acts (see, for example, *Bălșan v. Romania*, no. 49645/09, §§ 71 and 87, 23 May 2017; see also paragraph 71 above). In the present case, as already stated, the authorities intervened, when informed, each time there had been an isolated incident of domestic violence in the family in order to provide immediate relief to its victims (see paragraphs 6, 7, 8, 9 and 13 above). After a number of incidents occurring relatively close together in time, namely over a period of some three years, reached a certain degree of severity and “culminated” (as the domestic criminal court stated; see paragraph 33 above) in the event of 3 November 2008, the authorities initiated the last set of minor-offence proceedings, and, about a month thereafter, the proceedings on indictment for the continuous offence of domestic violence under Article 215a of the Criminal Code (see paragraphs 11 and 17 above, see also *Rohlena*, cited above, §§ 20, 33, 61 and 72). In fact, the criminal investigation started on 3 December 2009, after the Zagreb Minor Offence Court had found the applicant guilty of domestic violence in respect of the last incident (see paragraph 13 above) and he was indicted on 26 January 2009, two days before the judgment in the minor offence proceedings had become final (see paragraphs 17 and 23 above). Any disadvantage that might have ensued for the applicant from conducting these two proceedings in parallel for such a short period of time was thus negligible. The criminal proceedings thereafter continued for eight months at first instance and another two and half years on appeal and before the Constitutional Court. Thus, the Court is satisfied that the various proceedings were sufficiently connected in time so that the subsequent institution of criminal proceedings could not be seen as abusive (see, *mutatis mutandis*, *A and B v. Norway*, cited above, § 151; and contrast *Johannesson and Others v. Iceland*, no. 22007/11, § 54, 18 May 2017; and *Kapetanios*, cited above, § 67).

123. In conclusion, in the Court’s opinion, the aims of punishment, whereby different aspects of the same conduct are addressed, ought to be

considered as a whole and have in the present case been realised through two foreseeable complementary types of proceedings, which were sufficiently connected in substance and in time, as required by the Court's case-law, to be considered to form part of an integral scheme of sanctions under Croatian law for offences of domestic violence. There was an adequate level of interaction between the courts in those proceedings, and the punishments imposed, taken together, did not make the applicant bear an excessive burden, but were proportionate to the seriousness of the offence. In view of the foregoing, the Court finds no abuse of the State's right to impose a punishment (*jus puniendi*), nor can it conclude that the applicant suffered any disproportionate prejudice resulting from the duplication of proceedings and penalties when criminal proceedings for a continuous offence of domestic violence were conducted following five previous convictions in the minor-offence proceedings for individual acts which formed an integral part of the pattern of the applicant's behaviour (see, *a contrario*, *Kapetanios and Others*, cited above, §§ 65-74; see also the relevant CJEU case-law cited in paragraph 70 above). Rather, those proceedings and penalties formed a coherent and proportionate whole, which enabled punishing both the individual acts committed by the applicant and his pattern of behaviour in an effective, proportionate and dissuasive manner (see, *mutatis mutandis*, *A and B v. Norway*, cited above, §§ 112, 130 and 147; and *Bajčić*, cited above, § 46).

124. It follows that there has been no violation of Article 4 of Protocol No. 7 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The claimed 856,000 Croatian kunas (HRK; approximately 114,130 euros (EUR)) in respect of pecuniary damage on account of his loss of salary during the period when he had been detained and serving his prison term, loss of profit and not maintaining his house. He also claimed compensation for non-pecuniary damage in the amount of HRK 700,000 (approximately EUR 93,300).

127. The Government deemed these claims excessive, unfounded and unsubstantiated.

128. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, it finds that the applicants must have suffered non-pecuniary damage as a result of the violation of Article 6 §§ 1 and 3 (c) of the Convention found, which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards him EUR 1,500 under this head, plus any tax that may be chargeable to him.

B. Costs and expenses

129. The applicant also claimed HRK 10,000 (approximately EUR 1,360) in respect of costs and expenses incurred before the Court.

130. The Government deemed that claim excessive, unfounded and unsubstantiated.

131. The Court observes that the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court in that he did not submit itemised particulars of his claim for costs and expenses or any relevant supporting documents, even though he was invited to do so. In these circumstances, the Court makes no award under this head (Rule 60 § 3).

C. Default interest

132. 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 §§ 1 and 3 (b) and (c) of the Convention as regards the brevity of the period during which the applicant had to prepare his defence before the appeal court session;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention as regards the applicant's absence from the appeal court session;
4. *Holds* that there has been no violation of Article 4 of Protocol No. 7 to the Convention;
5. *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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement;

- (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;

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

Done in English, and notified in writing on 31 August 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Péter Paczolay
President