



Crime suspect deprived of food and sleep and questioned by police without legal assistance

In today's Chamber judgment in the case [Mađer v. Croatia](#) (application no. 56185/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, both in respect of the applicant's treatment at the Zagreb Police Department and in respect of the failure to investigate his complaint; **a violation of Article 6 §§ 1 and 3 (right to a fair trial; right to legal assistance)** on account of the lack of legal assistance afforded to the applicant during his questioning by the police; and **no violation of Article 6** as regards the alleged lack of legal assistance during his criminal trial.

The case concerned a prisoner's complaint of his treatment by the police during questioning and his criminal trial for murder.

Principal facts

The applicant, Josip Mađer, is a Croatian national who was born in 1950 and is currently serving a prison sentence for murder in Lepoglava State Prison (Croatia).

In the early morning of 1 June 2004, Mr Mađer was taken to the Zagreb Police Department. While the documents submitted to the Court do not clarify his treatment during the initial 25 hours after his arrest, it is undisputed between the parties that he remained at the police station. In the morning of 2 June, he was formally arrested on suspicion of murdering a man, whose body was found the following day. According to the official police record, a lawyer was called in the late evening of 3 June to serve as Mr Mađer's defence counsel; his police questioning started after midnight on 4 June after the lawyer had arrived. During the questioning, Mr Mađer confessed to the murder. On the same day, criminal charges were brought against him, he was brought before the investigating judge in the presence of a defence lawyer he had chosen and was then transferred to prison; no injuries were noted in the prison medical record.

During the ensuing proceedings, Mr Mađer was represented by an officially appointed defence counsel. At the first hearing, in December 2004, Mr Mađer pleaded not guilty and he subsequently made a submission to the trial court asserting that he had learned about the content of the statement he had supposedly made to the police only when he had consulted the case file, that at the time of the questioning he had been suffering from diabetes and high blood pressure and had not been given his medication, had not

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

been given any food for 20 hours and had not slept for nearly three days. He also complained that he had been ill-treated, that during the entire police questioning he had been forced to sit on a chair and the record of his alleged statement which he had signed had not been read out loud to him, although he had been unable to read it himself without his glasses.

At a subsequent hearing, Mr Mađer also complained to the trial court that no lawyer had been present during the questioning. The court heard a number of witnesses, including one of the police officers who had questioned Mr Mađer and the lawyer who had been called on 3 June to attend the questioning. The latter testified that Mr Mađer had already been questioned and had confessed before his arrival, but that when the handwritten record was dictated to the typist in his presence the police officer had confirmed the statements with Mr Mađer, who had not raised any objections. Following the testimonies, the court dismissed a request by Mr Mađer's defence for the record of the police questioning to be excluded from the case file, in a decision upheld by the Supreme Court, finding that Mr Mađer had been questioned in the presence of a lawyer and had been informed about his procedural rights.

In January 2006, the trial court, relying mainly on Mr Mađer's confession to the police, found him guilty of aggravated murder and sentenced him to 28 years' imprisonment. The judgment was upheld by the Supreme Court in September 2006, and in March 2009 the Constitutional Court dismissed Mr Mađer's constitutional complaint against the judgment.

Complaints, procedure and composition of the Court

Relying on Article 3, Mr Mađer complained in particular of having been beaten by the police during the questioning, of having been forced to sit on a chair and having been deprived of sleep and food during the three days that he was questioned. Relying on Article 6 §§ 1 and 3, he complained that the criminal proceedings against him had been unfair, in particular as he had lacked legal assistance during the police questioning and as the services of his officially assigned legal counsel had fallen short of the requirements of a fair trial. Relying on Article 5 (right to liberty and security), he further complained that his detention pending trial had been unlawful.

The application was lodged with the European Court of Human Rights on 10 December 2007.

Judgment was given by a Chamber of seven, composed as follows:

Anatoly **Kovler** (Russia), *President*,
 Nina **Vajić** (Croatia),
 Peer **Lorenzen** (Denmark),
 Elisabeth **Steiner** (Austria),
 Khanlar **Hajiyev** (Azerbaijan),
 Julia **Laffranque** (Estonia),
 Linos-Alexandre **Sicilianos** (Greece), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 3

The Court found that a number of facts added credibility to Mr Mađer's submission. In particular, his initial questioning had taken place without the presence of a lawyer. His

formal detention had only been registered one day after having been brought to the police department. Further, in his testimony before the trial court, the police officer who had questioned Mr Mađer had not denied the allegations of ill-treatment. The Court also took note of the fact that the police kept no record of the time when Mr Mađer had been interviewed or of when he was allowed to sleep or eat. Against that background and in the absence of any official record, the Court accepted Mr Mađer's allegations as true. While the Court did not find sufficient evidence that he had also been beaten by the police, the treatment he had received was severe enough to be considered inhuman treatment. There had accordingly been a violation of Article 3.

By complaining to the trial court, Mr Mađer had complied with his duty to inform the relevant authorities of his allegations of ill-treatment. Although those allegations were serious and had called for a thorough examination, no official investigation had been opened. While the trial court had heard witnesses about the circumstances of Mr Mađer's questioning by the police, their testimonies had only concerned the time after the defence lawyer had arrived. However, no assessment had been made as to Mr Mađer's stay from 1 June until the late evening of 3 June. The Court concluded that there had also been a violation of Article 3 in its procedural aspect for failure to effectively investigate Mr Mađer's allegation of ill-treatment.

Article 6

As regards the complaint concerning a lack of legal assistance during the police questioning, the Court noted that Mr Mađer was provided with the assistance of a lawyer from about 1 a.m. on 4 June 2004. Even if the Court based its considerations on the official record which had registered his arrest on 2 June, the fact remained that during the initial questioning by the police he did not have the assistance of a lawyer. His confession, made without consulting a lawyer, had been used in the proceedings and had been a significant basis for his conviction.

While it was not for the Court to speculate on the impact which access to a lawyer during police custody would have had on the ensuing proceedings, it was clear that neither the assistance provided subsequently by a lawyer nor the adversarial nature of the proceedings could counteract the defects which had occurred during his initial questioning. Mr Mađer had further not waived his right to legal assistance during his police questioning, as he had complained about the lack of that assistance from the initial stages of the proceedings. The Court therefore found that there had been a violation of Article 6 § 3 in conjunction with Article 6 § 1.

As regards the complaint concerning a lack of legal assistance during the trial, however, the Court noted that the officially-assigned defence counsel, who had represented Mr Mađer during that stage of the proceedings, had attended all the hearings before the trial court and had actively participated by making relevant proposals and putting questions to the witnesses. He had requested that the police report containing Mr Mađer's confession be excluded from the case file and had lodged an appeal against the decision refusing that request. He had also lodged an appeal against the first-instance judgment.

The record containing Mr Mađer's alleged confession had been part of the case file, so that his counsel had had the opportunity, even without consulting him in person, to study the file and prepare his defence on that basis. While at the appeal stage Mr Mađer had been represented by another lawyer, of his own choice, in his appeal he had not advanced new arguments which had not been previously submitted by the officially-appointed defence counsel. The Court therefore concluded that there had been no violation of Article 6 in respect of Mr Mađer's representation during the trial.

Article 5

The Court further declared Mr Mađer's complaints under Article 5 inadmissible, as he had failed to exhaust the domestic remedies in that respect.

Article 41

The Court dismissed Mr Mađer's claim for just satisfaction, noting that he had submitted that claim only in connection with his complaint under Article 5, which it had declared inadmissible. The Court further noted that he had the possibility to seek a fresh trial under the Croatia Code of Criminal Procedure.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.