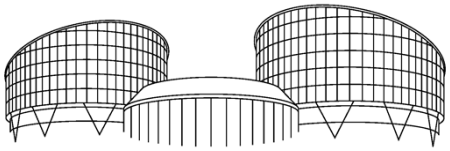

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KRPELÍK v. THE CZECH REPUBLIC

(Application no. 23963/21)

JUDGMENT

Art 6 §§ 1 and 3 (c) • Criminal conviction of an intellectually disabled person based on pre-trial statements made in the absence of a lawyer and interpreted as a waiver of his right to be represented • Authorities required to treat the applicant as a vulnerable person on account of his disabilities • Applicant only informed of his procedural rights by a complex pre-printed form • Applicant not fully aware of being entitled to legal representation and not reasonably able to appreciate the consequences of being questioned without counsel • Authorities should have taken additional steps by offering him appropriate forms of assistance • Waiver not attended by minimum safeguards commensurate with its importance • Applicant's right to legal assistance improperly restricted without compelling reasons • Domestic courts' failure to assess the applicant's capacity to make a valid waiver • Detriment suffered at the pre-trial stage not remedied in the court proceedings • Unfair trial as a whole

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 June 2025

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 Krpelík v. the Czech Republic,

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

Mattias Guyomar*, President*,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 23963/21) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Mr Oldřich Krpelík ("the applicant"), on 30 April 2021;

the decision to give notice of the application to the Czech Government ("the Government");

the parties' observations;

Having deliberated in private on 20 May 2025,

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

INTRODUCTION

1. The application concerns the alleged unfairness of the criminal proceedings against the applicant because he had not had legal assistance either during the initial police interviews or during a site visit to places relevant to the investigation. The applicant submitted that he should have been assisted by a lawyer all the more so given that he was in a vulnerable position because of his intellectual disability (Article 6 §§ 1 and 3 (c) of the Convention).

THE FACTS

2. The applicant was born in 1984 and lives in Frýdek-Místek. He is currently serving a sentence in the Vinařice Prison. He was represented by Mr R. Měrka, a lawyer practising in Frýdek-Místek.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. PRE-TRIAL PROCEEDINGS

5. Following several burglaries with features similar to those committed by him in the past, on 2 April 2016 the applicant received a written summons to give an explanation to the police authority investigating one of those burglaries. The summons included the information that, pursuant to Article 158 § 5 of the Code of Criminal Procedure (hereinafter "CCP"), persons giving explanations had a right to be legally assisted by a lawyer.

6. On 20 April 2016, the police asked for the applicant, who had failed to appear on the required date and who was no longer residing at his registered address, to be brought to the police station.

7. On 19 May 2016, the police arrested the applicant without seeking the prior approval of a prosecutor, because the matter was urgent within the meaning of Article 76 § 1 of the CCP (see paragraph 39 below). The arrest report, which had been signed by the applicant, indicated with reference to Article 76 § 6 of the CCP that the applicant had been informed of his right to choose a lawyer and to be assisted by her or him during his questioning.

8. On the same day, the applicant was first questioned as a suspect by the police between 2.57 p.m. and 3.05 p.m. Where the applicant's personal data were recorded, the report said that the applicant had only attended elementary school and that he had already been questioned multiple times in relation to various offences. The applicant signed the report, which included one page of information about the his rights and obligations, including his right under Article 76 § 6 of the CCP to choose a lawyer and to be assisted by her or him during questioning. That page of information was followed by a pre-printed form stating that the suspect had his rights and obligations sufficiently explained to him, that he had fully understood them and that he had not asked for further clarification. The applicant declared in a summary statement that he had been arrested earlier that day because he was suspected of burglaries and that he would provide more details in a subsequent explanation.

9. A further report drawn up on 19 May 2016 recorded that the applicant had given an explanation on the criminal matter as a suspect between 3.18 p.m. and 4.39 p.m., after having been informed of his various rights and obligations as stated in the report, namely his right under Article 158 §§ 5 and 8 of the CC to be assisted by a lawyer and his right not to say anything. He confirmed on a pre-printed form that he had received that information, that he did not want to avail himself of his right to remain silent and that he was willing to give evidence. After having declared that he was in good health and was not under any medical treatment, the applicant stated that he had broken into multiple buildings in the vicinity and had stolen various items and that he had forgotten the details of most of the burglaries. At the end he confirmed that the text of his statement had been read out to him, that he had had an opportunity to read it and that he agreed with it; and he signed the report adding "read approved", misspelling the second word *(četl sohlasi)*.

10. On 20 May 2016 the police and the applicant undertook a site visit to the location of the burglaries that were being investigated; an employee of a local authority attended as an independent observer. During the visit the applicant gave directions and explained how he had entered the buildings and what items he had stolen.

11. On the same day the police brought a criminal prosecution against the applicant for several acts of theft and trespass. Subsequently, the applicant was questioned as a charged person. The report contained two pages of pre-printed information about the applicant's rights and obligations, including his rights under Article 33 § 1 of the CCP to refuse to give evidence and to choose a lawyer and to be assisted by her or him during questioning and at any stage of the pre-trial proceedings. In the statement, which had been read out to him and which he had read and signed, the applicant stated that he had understood that information, and that he waived his right to lodge a complaint against the prosecution, was not choosing a lawyer and was willing to give evidence. The applicant also confirmed that he felt physically and mentally fine and that since his last psychiatric treatment at the age of thirteen years he had not been subject to any treatment or psychiatric examination. He then admitted the charges.

12. On 22 May 2016, following an application by the prosecutor to have the applicant remanded in detention, a detention hearing was held at the Frýdek-Místek District Court, during which the applicant confirmed that he had confessed to the charges of his own free will. After the court had made a detention order, the applicant waived his right to appeal and, not having chosen a lawyer, he asked to be appointed one by the court. The court appointed a lawyer for him on the same day.

13. The lawyer appointed for the applicant filed a complaint about the prosecution of the applicant, on the grounds that the police had put psychological pressure on the applicant to confess. The complaint was rejected by the prosecutor, who referred to the applicant's previous waiver.

14. On 23 June 2016 the applicant's charges were extended to include other offences, which the applicant's lawyer challenged by a complaint. He argued that the applicant had been subjected to psychological pressure during his questioning on 19 May 2016 and the subsequent site visit, and that that pressure had been exacerbated by the fact that his arrest had been unlawful. The complaint was rejected by the prosecutor, who stated that there had been no indication of any pressure, as the applicant had also confirmed himself at the detention hearing of 22 May 2016.

15. On 4 July 2016 the police scheduled a further questioning of the applicant. After having consulted his lawyer, who was present, the applicant exercised his right to remain silent.

16. At the detention hearing of 11 August 2016, after having been informed of his rights and having consulted his lawyer, who was again present, the applicant declared that he had already made a statement on his

criminal matter at the police and that he did not want to change anything in it.

17. On 31 August 2016, the applicant's lawyer asked the police to provide further evidence and for a report to be commissioned from a psychological expert to establish whether the applicant's mental disabilities allowed him to represent himself or whether he was required to have legal assistance under to Article 36 § 2 of the CCP. The police rejected the request, saying that there was nothing that cast doubt on the applicant's mental capacity, which the applicant's lawyer challenged by an application to the prosecutor for review.

18. On 13 September 2016 the applicant was formally indicted by the prosecutor.

II. CRIMINAL TRIAL

19. At a hearing at the Frýdek-Místek District Court on 11 October 2016, the applicant repeatedly stated that he had not done anything wrong, that he had got confused and scared in the pre-trial proceedings and that he had signed the papers without understanding half the text because the police officers had been convinced of his guilt and coerced him into confessing. The applicant's lawyer asked for it to be put on record that the applicant was giving evidence even though he had advised him to remain silent, and that it was doubtful that the applicant had understood that he was not obliged to say anything. When asked by the judge whether he understood the content of his consultation with the lawyer, the applicant stated that he did and that he had made his statements merely out of confusion.

20. On 27 October 2016 the court examined four police officers who had been in contact with the applicant during his questioning on 20 May 2016, all of whom denied having coerced him into confessing. Police officer R.Š. stated that he had explained the applicant's rights to him orally, which had taken about ten or fifteen minutes, that the applicant had subsequently made his statement spontaneously and in an ordinary way and that he had had an opportunity to read the record (but not the information about his rights and obligations, which existed only in electronic form). Police officer E.D. stated that, generally, the applicant had appeared to him "a bit weaker mentally than an ordinary person" and said that he had made some outlandish comments. Police officer J.H. observed that the applicant had not appeared "truly retarded" but communication with him was somewhat awkward. The person who had attended the site visit as an observer stated that the applicant's behaviour and communications had been normal and that he had not noticed any coercion.

21. On 30 January 2017 a psychiatric expert, M.P., who had been commissioned by the District Court, delivered an expert report saying the applicant was slightly mentally disabled (with an IQ between 60 and 70) and that his diminished mental capacity together with his education (elementary

school only) would mean he could not represent himself effectively. He was fit to stand trial and could understand simple texts, but he was not able to grasp more complex texts, and when it came to signing documents he was easily influenced and could be manipulated into conduct that was not to his benefit. The expert stated to the court that the syntax and complexity of the applicant's pre-trial statements as recorded did not correspond to his capacities, that he was not able to understand the pre-printed information about his rights and obligations and that he would be capable of taking irrational steps (for example, making a confession) when exposed to a higher degree of psychological stress.

22. On 13 February 2017 the District Court acquitted the applicant on the grounds that it had not been proved that he had committed the offences with which he had been charged. Relying particularly on the expert report, the court held that the applicant was not able to represent himself effectively because of his mental disability. It referred to the statements of the escorting police officers (see paragraph 20 above) and held that the police commissioner should have asked the prosecutor to appoint a lawyer for the applicant pursuant to Article 36 § 2 of the CCP. The pre-trial statements made by the applicant without a lawyer, as well as the records of the site visit, which had been carried out even before the opening of criminal prosecution, therefore did not constitute admissible evidence.

23. The prosecutor appealed, challenging M.P.'s expert report. The Ostrava Regional Court quashed the acquittal and sent the case back to the District Court for further evidence concerning the applicant's ability to represent himself to be produced. It observed, with reference to the case-law of the Supreme Court, that Article 36 § 2 of the CCP about when legal assistance was required referred to objective doubts, which could stem either from an expert report (and there had not been one available at the material time) or from the fact that the person concerned was subject to psychiatric treatment or supervision (which the applicant had denied being, along with stating that he was in good health).

24. Subsequently, the District Court admitted a further expert report from a psychologist, which said that the applicant – whose IQ of 67 corresponded to the upper level of a slight intellectual disability – showed a diminished capacity to put forward arguments in his own favour, to defend his own interests or to orientate himself in written texts; he suffered from cognitive disabilities and was highly manipulable. He was nevertheless able to communicate normally and to remember and talk about specific events in the way recorded in the reports. When questioned by the applicant's lawyer at the hearing, the expert, P.V., stated that without assistance and simplified explanation the applicant would not have been able to understand the standard information about his rights and obligations.

The expert M.P. added to his report of 30 January 2017 (see paragraph 21 above) by observing that a slight mental disability was characterised by

significantly reduced development of intellectual abilities, memory, learning, and quality of speech, and, as such, cast at least a reasonable doubt on the applicant's capacity to use those abilities in his own defence. He concluded that the applicant was able to present logical arguments in his own favour but the overall quality of his defence should he try to represent himself would be likely to be impaired by his disability.

The District Court found the conclusions of the expert reports to be unbalanced and unconvincing and it ordered an expert review from a psychiatrist and a psychologist. Those experts, R.G. and G.Z., concluded that despite his slight mental disability (with an IQ between 65 and 70) and although his reading and writing abilities were at elementary school level, the applicant was fit to stand trial, could understand the purpose of criminal proceedings and could represent himself effectively. He was capable of grasping the meaning of a written text and was well oriented in practical life; his capacity to perceive, remember and talk about events in his life was diminished but not absent, and he was capable of distorting facts in his favour. As to the reports drawn up during his pre-trial questionings, it was beyond any doubt that they did not record his statements directly because, in reality, his own statements could not have been structured in the way the reports were.

25. On 31 July 2018, the District Court found the applicant guilty on all charges and sentenced him to thirty months in prison. Relying on the expert review, the court found that the conditions for legal assistance to be required had not been met. The evidence taken in the absence of the applicant's lawyer was admissible, even if the statements in the police reports had probably been formulated by the police officers. In any event, the applicant had also repeated his confession before the court and in the presence of his lawyer (at the detention hearing of 11 August 2016), and the fact that he had denied his guilt at trial seemed rather to be part of a defence strategy developed by his lawyer.

26. The applicant appealed to the Regional Court, which dismissed his appeal on 24 October 2018. It observed that the applicant's capacity to represent himself effectively had been properly assessed. Moreover, although the applicant had later denied his guilt, it had not been shown that he had been coerced into making his pre-trial confession, which was corroborated by other evidence, namely the record of the site visit and witness statements.

27. On 29 May 2019, following an appeal by the applicant on points of law, the Supreme Court quashed the above-mentioned decisions on the grounds that the findings of fact pertaining to three criminal offences to which the applicant had not confessed rested solely on the report from the site visit, which should have been treated only as corroboration. However, the Supreme Court endorsed the courts' conclusion that legal assistance had not been required (until the applicant was detained), adding that any analysis of the accused's capacity to represent himself effectively had to take account of the complexity of the charges and of the specific criminal proceedings.

28. On 21 November 2019 the District Court found the applicant guilty, except for the three offences identified by the Supreme Court of which he had been acquitted, and sentenced him to two years' imprisonment. On the basis of the expert reports, it held that there had been no requirement for him to have legal assistance since there had not been any doubt about his capacity to represent himself effectively. The court also took into account that the applicant had participated in various previous criminal proceedings and of the fact that he had not complained of poor health and that what the police officers had observed had not raised any doubts; the fact that he had appeared mentally weak to them only illustrated his capacity for using various manoeuvres in his own favour. The court therefore held that the applicant's repeated confession in the pre-trial proceedings, which he had not retracted even in the presence of his lawyer and which had been corroborated by the site visit, was admissible and provided sufficient grounds for his conviction.

29. On 4 February 2020 the Regional Court dismissed an appeal by the applicant, endorsing the District Court's findings and observing that the present case involved ten quite simple offences which the applicant had described in detail.

30. The applicant lodged an appeal on points of law, which was dismissed by the Supreme Court on 1 July 2020. The court confirmed that the applicant's pre-trial statements and confession were procedurally admissible and that the authorities had acted lawfully when appointing a lawyer for the applicant only when remanding him in detention.

31. In his subsequent constitutional appeal, the applicant complained mainly about a lack of respect for his right to a fair trial under Article 6 §§ 1 and 3 (c). He argued that from the very beginning there had been reasons why he should have had legal assistance given his intellectual disability, which was also shown by the police officers' expressed doubts concerning his mental capacity. He also claimed that the courts had treated the question of whether legal assistance should be given as a question of fact, relying too extensively on expert reports which were however contradictory. The applicant further argued that the confession he had made without the assistance of a lawyer at the pre-trial stage should therefore not have been admitted as evidence of his guilt.

32. On 3 November 2020 in decision no. I. ÚS 2809/20 the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded. Although it found that the applicant's confession had effectively stood as primary evidence of his guilt, the Constitutional Court held that not only had the criminal courts not underestimated his argument that that evidence had been procedurally inadmissible but they had paid substantial attention to that argument and had ordered several expert reports to assess his mental condition. Relying on the conclusions of the experts but also on the simplicity of the applicant's offences and his previous experience with criminal proceedings and following the case-law of the Supreme Court, they

concluded that the applicant's capacities enabled him to understand the purpose of the criminal proceedings and to represent himself. In the Constitutional Court's view, the applicant had merely objected to the outcome of the factual and legal assessment made by the courts, which was however not arbitrary.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CRIMINAL PROCEDURE (LAW NO. 141/1961) AS IN FORCE AT THE MATERIAL TIME

33. Under Article 2 § 13, a person against whom criminal proceedings are being conducted must be informed in an appropriate and comprehensible manner, and at every stage of the proceedings, of her or his rights enabling him to fully exercise his right to present his defence, and of her or his right to choose a lawyer.

34. Pursuant to Article 33 § 1, the accused has the right, *inter alia*, to be heard on all the offences she or he is accused of, and to give evidence, but does not have to give evidence. The accused also has the right to choose a lawyer and to be assisted by her or him during questioning and any other stage of pre-trial proceedings.

35. Under Article 33 § 6, where an accused person has been arrested or detained by the criminal justice authorities, they must inform her or him of his rights in writing without undue delay. The accused has to be given the opportunity to read that information and keep it with her or him for so long as she or he is deprived of liberty or her or his liberty is restricted.

36. Pursuant to Article 36 § 1, an accused person must be assisted by a lawyer in pre-trial proceedings if, *inter alia*, the accused person has been remanded in detention or if her or his legal capacity is limited.

37. Under Article 36 § 2 a lawyer also has to be appointed for the accused if the court or in pre-trial proceedings the prosecutor deems it necessary, particularly if there are doubts about the accused's ability to defend herself or himself properly because of her or his physical or mental disabilities.

38. Article 36 § 3 provided that the accused had to be assisted by a lawyer including in pre-trial proceedings if she or he was liable to a prison sentence of more than five years.

39. Article 76 § 1 provided that a suspect could be arrested by the police before criminal prosecution was brought against him or her, with a prior approval of prosecutor. That approval was not needed when the matter was urgent and the approval could not be obtained in advance.

40. Pursuant to Article 76 § 6, a detained suspect has the right to choose a lawyer, to speak with her or him without the presence of a third person and to consult with her or him during her or his detention. She or he also has the right to have the lawyer present during the questioning. A detained suspect

has to be informed of those rights and provided with full opportunity to exercise them.

41. Pursuant to Article 158 § 5, persons giving an explanation in relation to criminal offences have a right to be assisted by a lawyer.

42. Article 158 § 8 provides, *inter alia*, that a person giving an explanation to the police must tell the truth and may not withhold anything. However, she or he may refuse to say anything if it would incriminate her or him or specified other persons. The person from whom the explanation is required has to be informed of that in advance.

II. DOMESTIC COURT PRACTICE

43. The Supreme Court stated in its judgment no. 8 Tdo 713/2011 of 15 June 2011 that an accused person had to be appointed a lawyer by the time a criminal prosecution was commenced if the grounds for requiring legal assistance were present at that time.

44. In judgment no. 4 Tz 31/2014 of 22 July 2014 the Supreme Court held that doubt as to the accused's ability to defend himself was sufficient for a decision to provide him with legal assistance. It was not necessary to prove beyond reasonable doubt that he had ever been unable to defend himself.

45. On 14 February 2005 the Constitutional Court held in judgment no. IV. ÚS 188/04 that the right to prepare and present one's defence applied at all stages of the criminal proceedings, regardless of whether the accused was a repeat offender or lacked mental capacity. It was, in particular, in cases of diminished mental capacity that the accused's rights had to be strengthened to ensure a fair trial. The courts could not accept procedural steps taken by a person that lacked the mental capacity to perform them, even if that lack of capacity had not been formally recognised by the limiting of their legal capacity.

46. In judgment no. III. ÚS 2374/07 of 24 April 2008 the Constitutional Court held that the authorities had a relatively wide discretion in decisions as to whether legal assistance was required for an accused person, as the law did not specify any conditions. This assessment depended on the specific circumstances of each case.

47. In judgments no. IV. ÚS 2443/14 of 18 March 2015 and no. I. ÚS 469/16 of 22 March 2016 the Constitutional Court held that if an accused person waived her or his right to legal assistance, it had to be determined whether the waiver was made freely and voluntarily, with a clear understanding of its consequences, and the court should assure itself that the accused was not in a vulnerable position. Legal assistance would be required if there was doubt about an accused person's mental condition and the requirement that a person must be able to prepare and present a defence meant that if an accused person was about to make a crucial statement, she or he first had to be fully informed of its significance and consequences and the

right to consult a lawyer beforehand. If the accused person did not request a lawyer, one had to be appointed by the authorities.

48. On 14 February 2023 in judgment no. III. ÚS 2665/22 the Constitutional Court held that the authorities did not have to appoint a lawyer for the accused automatically in every case when there was any objective indication of mental health problems. However, if objective circumstances (including, *inter alia*, the accused's apparently abnormal behaviour) suggested a mental disability which could even potentially affect his ability to participate fully in the proceedings, the authorities always had to obtain sufficient clarification of the accused's mental state. If they found the accused unable to participate fully in the proceedings or to present a defence, appropriate compensatory measures had to be taken. These could include adapting the proceedings so that the accused fully understood them, modifying the information provided about the accused person's rights, or appointing a lawyer. Without the clarification of the accused's mental state, the extent to which that mental condition affected the accused's ability to fully participate in the proceedings and exercise her or his rights effectively would remain uncertain. That in itself would constitute a violation of an accused person's rights to judicial protection and to prepare and present a defence.

III. RELEVANT INTERNATIONAL AND EUROPEAN UNION MATERIAL

A. Convention on the Rights of Persons with Disabilities

49. The relevant parts of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the "CRPD"), adopted by the United Nations General Assembly on 13 December 2006, Resolution A/RES/61/106, ratified by the Czech Republic on 28 September 2009, provide as follows:

Article 9 – Accessibility

„1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*:

...

b) Information, communications and other services, including electronic services and emergency services.

...

2. States Parties shall also take appropriate measures:

...

f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

..."

Article 13 – Access to justice

"1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff."

B. The UN Committee on the Rights of Persons with Disabilities

50. The United Nations Committee on the Rights of Persons with Disabilities (hereinafter "the Committee") has defined the concepts of reasonable accommodation and procedural accommodations in the context of the equal enjoyment of rights by people with disabilities and has provided recommendations to the State parties in this regard. In the case of *Marlon James Noble v. Australia* of 2 September 2016 (UN Doc. CRPD/C/16/D/7/2012), concerning an alleged denial of access to justice in criminal proceedings against a man with intellectual disability, the Committee stated that States parties must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations. In that case, the Committee recommended that the State party should adopt, *inter alia*, a national plan of action to build the capacity of judges, prosecutors, police officers and prison staff, to enhance their knowledge of the rights of persons with disabilities and to ensure the provision of procedural and age-appropriate accommodation in all legal procedures.

51. In the case of *Al Adam v. Saudi Arabia* of 20 September 2018 (UN Doc. CRPD/C/20/D/38/2016), the Committee observed that the State parties' obligation to ensure effective access to justice for persons with disabilities entailed respecting all components of the right to a fair trial, including the right to be legally represented and not to be subjected to any direct or indirect physical or undue psychological pressure from the investigating authorities to make a confession of guilt. The Committee stated in this case that the State party had to make all the procedural accommodations necessary to enable effective participation in the legal process by the person concerned.

52. The Committee observed in the case of *Makarov v. Lithuania* of 18 August 2017 (UN Doc. CRPD/C/18/D/30/2015) that States parties must ensure effective access to justice for persons with disabilities to allow them to participate directly and indirectly in all legal proceedings, including as witnesses and in investigations and at other preliminary stages. In the present case, it was recommended that the State party adopt a national plan of action for judicial and law enforcement personnel to enhance their knowledge on the rights of persons with disabilities and to ensure that procedural accommodations were made in all areas of the legal process.

53. In April 2014 the Committee adopted General Comment No. 2 on Article 9 of the Convention on the Rights of Persons with Disabilities relating to accessibility. The relevant parts dealing with access to information and communication read as follows:

> "...21. Without access to information and communication, enjoyment of freedom of thought and expression and many other basic rights and freedoms for persons with disabilities may be seriously undermined and restricted. Article 9, paragraph 2 (f) to (g), of the Convention therefore provide that States parties should promote live assistance and intermediaries, including guides, readers and professional sign language interpreters (para. 2 (e)), promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information, ..., through the application of mandatory accessibility standards. Information and communication should be available in easy-to-read formats and augmentative and alternative modes and methods to persons with disabilities who use such formats, modes and methods.
>
> ...
>
> 37. There can be no effective access to justice if the buildings in which law-enforcement agencies and the judiciary are located are not physically accessible, or if the services, information and communication they provide are not accessible to persons with disabilities (art. 13)."

54. On 15 May 2015 the Committee issued its Concluding observations on the initial report of the Czech Republic (UN Doc. CRPD/C/CZE/CO/1), noting and recommending, *inter alia*, the following:

> **Accessibility (art. 9)**
>
> "19. ... The Committee calls upon the State party to ensure that premises open to the public are accessible for persons with disabilities, especially deaf persons, blind persons and persons with intellectual disabilities, by providing sign language interpretation, signage in Braille and augmentative and alternative communication, and all other accessible means, modes and formats of communication, such as pictograms.
>
> ...
>
> **Access to justice (art. 13)**
>
> 24. The Committee notes with concern the lack of access for blind persons and persons with intellectual and psychosocial disabilities to judicial and administrative proceedings.

25. The Committee urges the State party to ensure the availability of documents in formats accessible to all persons with disabilities who need them. It also recommends that judges and other personnel in the justice system be trained on the rights enshrined in the Convention."

C. Office of the UN High Commissioner for Human Rights

55. In 2017, the OHCHR issued a report on the right of access to justice under Article 13 of the CRPD (UN Doc. A/HRC/37/25). The relevant parts of that report read as follows:

"17. The Convention calls for substantive equality, "which includes both equality of opportunities and equality of outcomes", and article 13 (1) explicitly requires States parties to "ensure access to justice for persons with disabilities on an equal basis with others". The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.

18. The Committee on the Rights of Persons with Disabilities has stressed that persons with disabilities are entitled to all rights and procedural safeguards during the pretrial, trial and post-trial phases, including the right to a fair trial, presumption of innocence, the rights of defence and the right to be heard in person, as well as all the other rights granted to other persons.

19. ... In relation to persons with disabilities, whether with respect to criminal proceedings or in civil matters access to justice is most often denied as a result of lack of accessibility of and access to information, procedural accommodations, the right to claim justice and stand trial, respect for presumption of innocence and legal aid.

....

21. Effective access to information and communication allows persons with disabilities to know and defend their rights. The use of accessible information and communications technologies, in particular through their application to delivering government services (e-governance), can contribute to improving access to justice and access to information. The Committee has pointed out that article 9 (2) (h) of the Convention calls on States parties to promote accessible legal information to persons with disabilities and to society at large by using the full and varied range of formats and modes of communication. It also noted that new technologies could contribute to that end.

...

24. Equality of arms is a component of the right to a fair trial, guaranteeing that the same procedural rights are provided to all the parties to ensure access to the same information and the same opportunities to adduce and challenge evidence. Persons with disabilities are frequently hindered in enjoying equality of arms due to inaccessible documentation or procedures. Beyond accessibility, States parties must make available the procedural and age-appropriate accommodations that persons with disabilities may require in accessing justice. The list of measures that States parties should take to ensure effective and equal access to justice enumerated in article 13 (1) of the Convention is not exhaustive, and States parties are obliged to provide procedural and age-appropriate accommodations to facilitate the role of persons with disabilities as direct and indirect participants in all legal proceedings, including the investigative and other preliminary stages. Hence, procedural accommodations serve as a means to effectively realize the

right to a fair trial and the right to participate in the administration of justice, and are an intrinsic component of the right to access to justice. The Committee on the Rights of Persons with Disabilities has provided a number of examples of how procedural accommodations for persons with disabilities can look in practice, for example, through the provision of sign language interpretation, legal and judicial information in accessible formats for, multiple means of communication, easy read versions of documents, Braille and video link testimony, among others.

...

31. Lack of procedural accommodations violates the right to a fair trial and may lead to effective exclusion from proceedings and/or being subjected to unfair sentences.

...

54. Under the Convention, for persons with disabilities to have access to justice on an equal basis with others, they must be able to effectively participate, directly or indirectly, in all legal proceedings, including at the investigative and other preliminary stages.

...

Recommendations:

63. The right to a fair trial for persons with disabilities includes ensuring that they have equal access to claim rights, meaning that they must have access to courts and legal proceedings and to maintain legal standing. Equal recognition before the law and the right to access to justice are intrinsically intertwined, and often one element cannot be enjoyed without the other. States should modify civil, criminal and procedural laws which prevent persons with disabilities from directly or indirectly participating in judicial or administrative processes on an equal basis with others either by granting third-party representation in law or in fact without free and informed consent or by denying legal standing. States should also implement laws and policies that ensure that information needed to defend rights is accessible, and that free and affordable legal aid is provided to persons with disabilities in all areas of law.

64. Within proceedings, persons with disabilities face a number of barriers to access justice due to discriminatory laws and practices, including being denied the right to a trial. In respect of the principle of equality of arms, States should repeal such laws and prohibit those practices and implement anti-discrimination measures, including providing procedural accommodations when necessary, in all their forms and in all legal proceedings."

D. Special Rapporteur on the rights of persons with disabilities

56. In August 2020, the Special Rapporteur on the rights of persons with disabilities adopted International Principles and Guidelines on Access to Justice for Persons with Disabilities regarding, *inter alia*, Article 13 of the CRPD. The relevant parts read as follows:

"...**Principle 3:** Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

3.1 To avoid discrimination and guarantee the effective and equal participation of persons with disabilities in all legal proceedings, States shall provide gender- and age-appropriate individualized procedural accommodations for persons with disabilities.

They encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities. To the fullest extent possible, accommodations should be organized before the commencement of proceedings.

3.2 States shall ensure the provision of a range of procedural accommodations, while also ensuring that such accommodations are implemented so as to properly balance and respect the rights of all parties by, among other things:

Independent intermediaries and facilitators...

Procedural adjustments and modifications...

Communication support...

Procedural accommodations for persons accused of crimes, prisoners and detainees:

(h) Ensuring that police officers, prosecutors and others involved in arrests and investigations of criminal offences are knowledgeable about the rights of persons with disabilities, are alert to the possibility that a person may have a disability and, throughout the course of an arrest or investigation, adjust their responses accordingly;

(i) Ensuring that independent third persons, such as attorneys or others, are available to accompany persons with disabilities to the police station to assist them in the investigative process, including, for example, fingerprinting or giving a biological sample, and that intermediaries or facilitators, or similar, are available to facilitate communication between persons with disabilities and law enforcement and court personnel;

...

Principle 4: Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.

4.1 To guarantee the right to timely and accessible information, States shall:

...

(d) Ensure that notices and information include clear understandable information about how a procedure works, what to expect during a process, what is expected of a person, where to get help with understanding the process and the person's rights in the process, in language that is not merely a repetition of the statute, regulation, policy or guideline – for example, plain language;

(e) Ensure that support is available in real time for individuals who need assistance to understand notices and information by providing, for instance, interpreters, guides, readers, intermediaries and facilitators, and other forms of support.

...

Principle 5: Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

5.1 States shall ensure that all substantive and procedural safeguards recognized in international law, whether in criminal, civil or administrative procedures, including the presumption of innocence and the right to remain silent, are afforded to all persons with disabilities, on an equal basis with others. Procedural accommodations, when needed, must be available to all persons with disabilities, including suspects and accused

persons, who require assistance to participate effectively in investigations and judicial proceedings.

5.2 Accordingly, States shall:

...

(b) Ensure that suspects or accused persons with disabilities are provided with accessible and understandable information about their rights, including the right not to incriminate oneself;

...

(f) Ensure that procedural accommodations, including support, for effective participation are available so that persons with disabilities have the right, on an equal basis with others, to make their own choices of how to defend themselves;

...

Principle 10: All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

10.1 States must remove barriers to justice for persons with disabilities by providing training on the rights of persons with disabilities to all justice officials, including the police, judicial officers, lawyers, health professionals, forensic experts, victim service professionals, social workers, and probation, prison and youth detention staff.

10.2 To this end, Governments, legislatures and other authorities, including judicial councils and other independent judicial governing bodies and independent self-governing legal professional bodies, must each, within their respective roles, take the following actions:

(a) Enact and implement laws, regulations, policies, guidelines and practices that create a legal obligation for all persons who have a role in the administration of justice to participate in human rights- based training on the rights of persons with disabilities and the provision of accommodations in accordance with guideline 10.2 (j);

(b) Provide training on an ongoing basis to all those working in the administration of justice, including by national human rights institutions and representative organizations of persons with disabilities;

...

(f) Make training manuals widely available for all those engaged in the administration of justice, especially police officers, prosecution authorities and judicial officers;

(g) Use training to familiarize police officers, including first responders and investigators, prosecution personnel and judicial officers, with good practices in interactions with persons with disabilities, including response, behaviour and appropriate accommodations;

..."

E. European Union

57. Directive 2013/48/EU of the European Parliament and of the Council on, *inter alia*, the right of access to a lawyer in criminal proceedings

was adopted on 22 October 2013. The deadline for its transposition into the legislation of the European Union Member States was 27 November 2016. The relevant provisions of the Directive read as follows:

Article 12

"This Directive lays down minimum rules concerning the right of access to a lawyer in criminal proceedings and in proceedings for the execution of a European arrest warrant pursuant to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (5) (European arrest warrant proceedings) and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. In doing so, it promotes the application of the Charter, in particular Articles 4, 6, 7, 47 and 48 thereof, by building upon Articles 3, 5, 6 and 8 ECHR, as interpreted by the European Court of Human Rights, which, in its case-law, on an ongoing basis, sets standards on the right of access to a lawyer. That case-law provides, *inter alia*, that the fairness of proceedings requires that a suspect or accused person be able to obtain the whole range of services specifically associated with legal assistance. In that regard, the lawyers of suspects or accused persons should be able to secure without restriction, the fundamental aspects of the defence."

Article 39

"Suspects or accused persons should be able to waive a right granted under this Directive provided that they have been given information about the content of the right concerned and the possible consequences of waiving that right. When providing such information, the specific conditions of the suspects or accused persons concerned should be taken into account, including their age and their mental and physical condition."

Article 55

"...This Directive ensures that suspects and accused persons, including children, are provided with adequate information to understand the consequences of waiving a right under this Directive and that any such waiver is made voluntarily and unequivocally. ..."

THE LAW

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

58. The applicant complained that he had been convicted on the basis of a confession he had made at the pre-trial stage of proceedings in the absence of a lawyer, although he had been in a vulnerable position because of his intellectual disability. He relied on Article 6 §§ 1 and 3 (c) of the Convention, 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:

...

(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

59. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

60. The applicant complained that he had been convicted and sentenced to two years' imprisonment based on a confession obtained at the pre-trial stage of proceedings, during which he was not assisted by a lawyer despite his intellectual disability and consequent vulnerability. Contrary to the argument made by the Government, the applicant argued that his mental defect had already raised doubts with the police officers about his capacity to defend himself properly when he was being escorted to the initial questioning, as they had said in their statements. The domestic legislation had therefore required him to be assisted by a lawyer in the pre-trial proceedings. The applicant further claimed that the legal conditions for arrest without the prior approval of a prosecutor had not been met when he was arrested on 19 May 2016 and that his immediate detention had had a coercive effect on him, increasing his vulnerability, which was already at a high level. The applicant had then responded to that stressful situation with a confession as a way to escape.

61. Regarding his criminal record of fourteen convictions, which had been pointed out by the Government, the applicant stated that the repeated lack of legal assistance in those previous proceedings, despite his intellectual disability, was more an indication of a systemic issue in the Czech Republic than of the lawfulness of his not being represented by a lawyer in the current case.

62. Regarding the Government's observation that the applicant had not complained of not being assisted by a lawyer due to intellectual disability in any previous criminal proceedings, and that he had claimed be in good health, the applicant stated that vulnerable individuals with mental disability often do not assert their rights, which is what constitutes their vulnerability, and they usually do not consider themselves to be ill.

63. The applicant contested the Government's remark that an objective indication of psychological issues is not sufficient to require the appointment of a lawyer, as when there are doubts about a person's competence to defend themselves domestic law foresees the appointment of a lawyer by the court or the prosecutor should they deem it necessary. The applicant admitted that while it is difficult to establish a clear threshold and objective criteria for determining a person's vulnerability and their need for legal assistance, the domestic law is vague and can lead to arbitrary interpretations. The applicant further pointed out that there is no internal directive or methodological guide in the Czech Republic to direct police authorities in assessing whether an accused person should have legal assistance in pre-trial proceedings.

64. The applicant further contested the Government's position regarding the review of the expert reports made by the experts R.G. and G.Z., who had concluded that he was capable of effectively defending himself. The applicant considered that the reviewers had failed to make a distinction between his ability to defend himself and his criminal responsibility. On the other hand, the expert reports and the statements of experts M.P. and P.V. had showed that he would not be able to understand the printed form setting out a suspect's rights because of his poor reading skills and his diminished intellectual abilities, which stemmed from his mental disability. The applicant therefore concluded that he had not been capable of defending himself properly and should have been assisted by a lawyer from the outset of the criminal proceedings.

(b) The Government

65. The Government submitted that in the present case there had been no denial of access to a lawyer and no disregard for the applicant's other rights in the criminal proceedings. The conditions for legal assistance to be required under the CCP had not been met until the applicant had been remanded in detention. More importantly, the applicant had signed several records during the pre-trial proceedings confirming that he had received information on his rights and obligations and that those had been sufficiently explained to him, but he had still not availed himself of his right to choose a lawyer or to remain silent.

66. The Government argued that not all persons with mild mental disabilities should be treated as *a priori* incapable of defending themselves effectively in criminal proceedings and should therefore be appointed a lawyer irrespective of their situation; such an approach would be grounded in paternalistic stereotypes. Indeed, the applicant had been capable of making an informed decision not to avail himself of his rights, despite his mild mental disability, and therefore had waived his rights unequivocally, voluntarily and with full knowledge of the possible consequences. The Government also observed that the applicant had repeatedly indicated that he felt physically

and mentally well, both during the pre-trial stage and later, in the presence of his lawyer.

67. The Government further maintained that the police officers could have legitimately assumed that the applicant did not require legal assistance on account of his intellectual disability because they had known before interviewing the applicant that he was a repeat offender who had been convicted of fourteen offences between 2001 and 2023 and whose capacity to understand the purpose of the proceedings had previously never been in doubt nor contested by the applicant himself. Nevertheless, in the proceedings at stake, the courts had scrupulously examined the applicant's arguments in this regard, ordering several expert reports aimed at objectively establishing his mental state and his capacity to defend himself effectively and to participate in the proceedings. They had also taken into account the applicant's criminal history, the fact that he was accustomed to participating in criminal proceedings and the simplicity of his offences.

68. Should the Court disagree with their view that the applicant had validly waived his rights, the Government would admit that there had been no compelling reasons, within the meaning of the Court's case-law, to justify not giving the applicant legal assistance from the moment of his first interview: the interviews had not been motivated by an urgent need to avert a serious threat to the life, health or physical integrity of any person. They submitted nevertheless that, as a whole, the criminal proceedings against the applicant had been fair and that there had been a strong public interest in prosecuting him in view of his repeat offending and the nature of the offence.

69. Relying on the domestic courts' findings, the Government argued, in particular, that the applicant's mild mental disability had not put him in a vulnerable position and that the evidence against him obtained in the pre-trial proceedings was admissible under domestic law. The applicant had also had an opportunity to challenge the validity of the statements he had made in the absence of a lawyer, which essentially amounted to a confession, and to object to their use. However, he had not cast any doubt on the accuracy or reliability of those statements. Although those statements had played a significant role in his conviction, he had not retracted them promptly but had rather confessed again, in the presence of his lawyer; moreover, the site visit record constituted supporting evidence. The Government further pointed out that the applicant had been tried by professional judges and cited, as additional procedural safeguards, the presence of an independent person during the site visit, the applicant having been able to keep a copy of the information about his rights (see paragraph 35 above) and to ask the prosecutor to remedy defects in the police procedure, and the review of the fairness of the applicant's trial by the highest domestic courts.

2. The Court's assessment

(a) General principles

70. The requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the complaints under paragraphs 1 and 3 of Article 6 should be examined together (see *Gäfgen v. Germany* [GC], no. 22978/05, § 169, ECHR 2010, and *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010).

71. The right of everyone "charged with a criminal offence" to be effectively defended by a lawyer, 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; *Ibrahim and Others*, cited above, § 255; and *Beuze*, cited above, § 123).

72. Access to a lawyer at the pre-trial stage of the proceedings contributes to the prevention of miscarriages of justice and, above all, to the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused. The Court has acknowledged on numerous occasions since the *Salduz* judgment that prompt access to a lawyer constitutes an important counterweight to the vulnerability of suspects in police custody. Such access is also preventive, as it provides a fundamental safeguard against coercion and ill-treatment of suspects by the police (see *Salduz*, cited above, §§ 53-54; *Blokhin v. Russia* [GC], no. 47152/06, § 198, 23 March 2016,; *Ibrahim and Others*, cited above, § 255; and *Simeonovi*, cited above, § 112).

73. The Court has also recognised that the vulnerability of suspects may be amplified by increasingly complex legislation on criminal procedure, particularly with regard to the rules governing the gathering and use of evidence (see *Salduz*, cited above, § 54; and *Ibrahim and Others*, cited above, § 253).

74. Lastly, one of the lawyer's main tasks at the police custody and investigation stages is to ensure respect for the right of an accused not to incriminate himself or herself (see *Salduz*, cited above, § 54; *Dvorski v. Croatia* [GC], no. 25703/11, § 77, ECHR 2015; and *Blokhin*, cited above, § 198) and for his right to remain silent. It follows that a waiver of the right to a lawyer, a fundamental right among those listed in Article 6 § 3 which constitute the notion of a fair trial, must be strictly compliant with the above requirements (see *Akdağ v. Turkey*, no. 75460/10, § 46, 17 September 2019).

75. In this connection, the Court has considered it to be inherent in the privilege against self-incrimination, the right to remain silent and the right to legal assistance that a person "charged with a criminal offence", within the meaning of Article 6, should have the right to be informed of these rights, without which the protection thus guaranteed would not be practical and

effective (see *Ibrahim and Others*, cited above, § 272; and *Simeonovi*, cited above, § 119).

76. The Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. That also applies to the right to legal assistance (see, among other authorities, *Dvorski*, cited above, § 100 and 101, and *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 90, 2 November 2010). However, if it is to be effective for Convention purposes, such a waiver must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Such a waiver need not be explicit, but it must be voluntary and constitute a knowing and intelligent relinquishment of a right (see *Pishchalnikov v. Russia*, no. 7025/04, § 77, 24 September 2009, and *Simeonovi*, cited above, § 115). Before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see *Pishchalnikov*, cited above, § 77 *in fine*). Moreover, the waiver must not run counter to any important public interest (see *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A; *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II; and *Simeonovi*, cited above, § 115).

(b) Application of the above principles to the present case

77. The issue in the present case is whether the criminal proceedings against the applicant, who had a certain level of intellectual disability, were conducted so as to fulfil his right to a fair hearing, including in the way in which the evidence was obtained. In particular, the Court must determine whether the applicant validly waived his right to legal assistance, as claimed by the Government, in a situation where he was informed of his procedural rights only through pre-printed forms. It must also determine whether the self-incriminating statements the applicant made in the absence of a lawyer and which were relied upon by the courts were obtained in breach of his rights to prepare and present his defence at the pre-trial stage of the proceedings.

78. The Government argued that until the applicant had been remanded in detention his case was not of the kind where legal representation was required under domestic law (Article 36 of the CCP). Furthermore, the applicant had been informed of his rights to be assisted by a lawyer of his own choosing, to remain silent and not to incriminate himself on several occasions and he had voluntarily waived those rights.

79. The Court reiterates that Article 6 of the Convention does not prevent a person from waiving the right to aspects of procedure that may be part of the right to a fair trial of his or her own free will, either expressly or tacitly (see paragraph 76 above). However, where such a right is waived, the Court must examine whether the circumstances surrounding the waiver were

compatible with the requirements of the Convention, ensuring the waiver did not damage a matter of public interest and that there had been minimum safeguards in place commensurate with the importance of the waiver and the rights waived.

80. In the present case, several experts reported that the applicant had a slight intellectual disability characterised by a low IQ (around 67: see paragraph 24 above). The Court has already acknowledged intellectual disability as grounds in itself for particular vulnerability (see *A.- M.V. v. Finland*, no. 53251/13, § 73, 23 March 2017). In *Ibrahim and Others* (cited above, § 274) and *Beuze* (cited above, § 150) it was further clarified that a person involved in criminal proceedings may be particularly vulnerable not only by reason of his or her age, but by reason of his or her mental capacity as well; adult suspects or defendants with intellectual disabilities may therefore fall within the category of particularly vulnerable persons. The Court has also accepted that a police interview is particularly stressful for a suspect with even a slight intellectual disability (see *Hasáliková v. Slovakia*, no. 39654/15, § 68, 24 June 2021, in which the applicant was assisted by a lawyer from her very first questioning).

81. The Court observes that the applicant was entitled to the protection of Article 6 of the Convention from the time of his arrest, and is of the view that in the present case there were several signs that required the authorities to treat the applicant as a vulnerable person and to take his condition into account during questioning and in particular when informing him of his right to be assisted by a lawyer (see, *mutatis mutandis*, *Płonka v. Poland*, no. 20310/02, § 38, 31 March 2009). Indeed, it had been known to them that the applicant had only attended elementary school (see paragraph 8 above) and that he had had psychiatric treatment at the age of 13 years (see paragraph 11 above). Moreover, the police officers who had had contact with him had admitted that he had appeared “a bit weaker mentally” and that communication with him was somewhat awkward (see paragraph 20 above). The applicant’s legal capacity has never been formally limited and he had previously been tried for several criminal offences, but this does not dispel all doubts about his capacity to prepare and present a legal defence, as was also pointed out by the Constitutional Court (see paragraph 45 above). The Court would add that, while the Government submitted that the applicant’s capacity to understand the purpose of the proceedings had previously never been in doubt nor contested (see paragraph 65 above), they did not claim that there had been any procedure for assessing the applicant’s legal capacity or any expert examination of the issue in the previous criminal proceedings against the applicant.

82. The Court therefore considers that, given the vulnerability of the applicant as a result of his intellectual disability and the imbalance of power arising by the very nature of criminal proceedings, a waiver by him of an important right under Article 6 could only be accepted if it was expressed

unequivocally and after the authorities had taken all reasonable steps to ensure that he was fully aware of his rights and could appreciate, as far as possible, the consequences of his conduct (see, *mutatis mutandis*, *Panovits v. Cyprus*, no. 4268/04, § 68, 11 December 2008). It observes in that connection that, despite the Government's argument that the applicant's offence was very simple, the applicant was liable to a prison sentence, which was ultimately imposed on him.

83. As to the Government's argument that the applicant had been advised of his rights in accordance with domestic law, the Court observes that any information about the applicant's procedural rights were given to him only by the first pages of the pre-printed forms on which his pre-trial statements had been written. That information did include the applicant's right to remain silent and his right to choose a lawyer. There has been no allegation or other indication that any individualised advice about his situation and rights or any further explanation were provided to the applicant (see, *mutatis mutandis*, *Zachar and Čierny v. Slovakia*, nos. 29376/12 and 29384/12, § 70, 21 July 2015). It rather appears that at least on one occasion, on 20 May 2016, the information had simply been read to him, without his having any opportunity to go through the printed text at his own pace before signing it as a record (see paragraph 20 above).

84. The Court also observes that the relevant text would be challenging even for persons of full intellectual capacities and that it was rendered even more complex by the inclusion of references to various legal provisions which applied depending on the applicant's current status (whether he was a person giving an explanation, an arrested person, a suspect, a charged person). In this respect, the Court points out that the applicant seems to have struggled even with the instructions he received later from his lawyer (see paragraph 19 above). It therefore finds, given the circumstances of the present case, in which the applicant had a certain level of intellectual disability and was taken for questioning without any legal or other assistance, that it was unlikely that mere advice in the words provided for in the domestic law would have been enough to enable him to sufficiently comprehend the nature of his rights and to exercise them effectively.

85. Consequently, the Court finds that the applicant was not made fully aware that he was entitled to legal representation before making any statement to the police. Moreover, given the lack of assistance by a lawyer or any other person (for example, a social worker, or a friend) who would be in a position to assist him to understand the pre-printed information about his rights and obligations, it was also unlikely that he could reasonably appreciate the consequences of being questioned without the assistance of a lawyer, including the fact that that could be interpreted as a waiver of his rights.

86. The Court reiterates in this regard that Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial (see *Stanford v. the United Kingdom*, 23 February 1994, § 26,

Series A no. 282-A). It has already ruled that special procedural safeguards may be called for in order to protect the interests of persons whose mental faculties are impaired (see *Vaudelle v. France*, no. 35683/97, §§ 60 and 65, ECHR 2001-I, with further references), and that persons incapable of conducting their own defence may be unable to draw the authorities' attention to the lack of legal assistance unless the question is raised by the authorities themselves (see, *mutatis mutandis*, *Grigoryevskikh v. Russia*, no. 22/03, § 90, 9 April 2009).

87. In view of the above, the Court finds that in the present case the national authorities should have taken additional steps, not in the sense of the paternalistic approach discussed by the Government (see paragraph 63 above) but by offering the applicant appropriate forms of assistance (see also paragraphs 49-54 above). Being conscious of the applicant's difficulties (see paragraph 81 above), they should have actively ensured, in any appropriate way, that he understood that he could ask for a lawyer free of charge if necessary (see *Talat Tunç v. Turkey*, no. 32432/96, § 61, 27 March 2007; *Padalov v. Bulgaria*, no. 54784/00, 10 August 2006, § 61; and *Panovits*, cited above, § 72), for example by providing him an easy-to-read version of the information on his rights and obligations (see paragraphs 53 and 55 above) or by providing an intermediary (see paragraphs 53 and 56 above) to facilitate communication and make the information accessible to him. In this way, they could have ascertained that he was able to understand the information provided and the consequences of his providing a statement without legal assistance, or, if in doubt, arranged for him to be represented by a lawyer. In that connection, the Court observes that apart from Article 36 § 2 of the CCP, there is no provision in domestic law offering other procedural adjustments for persons with disabilities who are subject to criminal proceedings (compare *F.S.M. v. Spain*, no. 5671/21, § 48, 13 March 2025, not final), nor has the Court been informed of any special training programme which would help police officers to deal with persons suffering from psychosocial disabilities (see, *mutatis mutandis*, *V v. the Czech Republic*, no. 26074/18, § 107, 7 December 2023). Nevertheless, it was acknowledged in the Constitutional Court's practice that compensatory measures could be taken (see paragraph 48 above) and the parties did not argue that procedural adjustments were prohibited by domestic law or were impossible in practice (see, *mutatis mutandis, Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006).

88. The authorities heard doubts about the applicant's intellectual capacities (see paragraph 20 above) but took no action between 19 and 22 May 2016. That was clearly not sufficient to fulfil their positive obligation to give the applicant the information necessary for him to exercise his rights effectively. In these circumstances, even assuming that the applicant's case did not warrant mandatory legal representation pursuant to Article 36 § 2 of the CCP, which would make a waiver of his right to be assisted by a lawyer

permissible under domestic law, and that the applicant can be considered to have made such a waiver, implicitly or explicitly (see paragraph 11 above), the Court cannot but conclude that that waiver was not attended by minimum safeguards commensurate with its importance (compare *Bogdan v. Ukraine*, no. 3016/16, § 69, 8 February 2024).

89. In view of the foregoing, the Court concludes that the applicant's right to legal assistance was improperly restricted on 19 and 20 May 2016 when he was questioned in the absence of a lawyer and made his confessions. It also shares the Government's view (see paragraph 68 above) that there were no compelling reasons for such a restriction.

90. The Court must therefore examine the consequences for the overall fairness of the criminal proceedings of the lack of a defence lawyer to assist the applicant on those dates.

91. In making this assessment the Court is guided by the criteria set out in the case of *Ibrahim and Others* (cited above, § 274), to the extent that it is appropriate given the circumstances of the present case. Because there were no compelling reasons for restricting the applicant's right to a lawyer, the Court must conduct its assessment strictly. The absence of such reasons carries considerable weight. It puts the onus on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on the applicant's access to legal advice (ibid., § 265; see also *Beuze*, cited above, § 145).

92. In the present case, it was first of all incumbent on the courts to assess, as requested by the applicant's lawyer, whether legal representation was required pursuant to Article 36 § 2 of the CCP or, if not, whether there had been a valid waiver of legal assistance by the applicant, as submitted by the Government (see paragraph 66 above, and also paragraph 47 above). If there had not been a valid waiver, the evidence obtained at the pre-trial stage in the absence of a lawyer should have been excluded for being inadmissible under domestic law.

93. The Court accepts the Government's submission (see paragraph 67 above) that in the present case the courts made some effort to examine whether the applicant was able to represent himself despite his mental disability or whether he required legal assistance. The first-instance court heard the police officers who had been in contact with the applicant at the pre-trial stage (see paragraph 20 above) and ordered several expert reports, including an overall review addressing the previous reports which had been found unbalanced and unconvincing (see paragraphs 21 and 24 above). Relying on that review, according to which the applicant was able to participate in criminal proceedings, to understand their purpose and to defend himself effectively, the court found that legal assistance for the applicant was not required and that the evidence collected in the absence of the applicant's lawyer was therefore admissible (see paragraph 25 above).

94. The Court observes, however, that the right of an accused person to participate effectively in a criminal trial requires not only understanding the nature and consequences of the trial but also being able to sufficiently comprehend the nature of his rights and to exercise them effectively. The accused must also be able to understand the consequences of waiving the rights to be assisted by a lawyer and to remain silent. In the present case, the Court notes that the domestic courts assessed, on the basis of the evidence available, including the expert reports, the applicant's capacity to stand trial and to represent himself effectively; however, they failed to assess his capacity to make a valid waiver of his right to legal assistance (see *Savaş v. Turkey*, no. 9762/03, § 68, 8 December 2009 ; and *Akdağ*, cited above, § 59); indeed, the issue of the waiver has been raised only by the Government.

95. The Court further observes that the confession obtained in the absence of a lawyer constituted a decisive element in the conviction of the applicant. Moreover, it appears from the file that the records of his pre-trial questioning did not set out his own statements directly but were rather of statements formulated by the interviewing police officers (see paragraphs 24 *in fine* and 25 above). The Court is further of the view that the applicant's confession provided the domestic investigating authorities with the framework around which they built their case and the focus for their search for other corroborating evidence, such as the site visit of 20 May 2016 (see paragraph 10 above); it therefore undoubtedly irreversibly affected the applicant's position and substantially inhibited the prospects of his defence at trial (compare *Ibrahim and Others*, cited above, § 309; and *Siyanko v. Ukraine* [Committee], no. 52571/11, § 77, 9 January 2020; contrast *Yurchenkov v. Russia* (dec.) [Committee], no. 38106/05, § 30, 10 April 2018).

96. The first-instance court emphasised that the applicant had repeated his confession also before the court, at the detention hearing of 11 August 2016 where his lawyer was present. The Court observes nevertheless that at that hearing the applicant limited himself to declaring that he had already made a statement on his criminal matter at the police and that he did not want to change anything (see paragraph 16 above). On the other hand, the applicant repeatedly stated before the trial court that he had not done anything wrong (see paragraph 19 above).

97. The Court therefore finds that although the applicant had the benefit of adversarial proceedings in which he was represented by a court-appointed lawyer, the detriment he suffered at the pre-trial stage of the proceedings was not remedied in the subsequent proceedings in which his confession was held to be admissible as evidence.

98. Against that background, the Court finds that the circumstances surrounding the applicant's alleged waiver of his right to legal assistance at the pre-trial stage, the insufficient scrutiny of that waiver by the courts and

the failure to cure that flaw by any other procedural safeguards during the proceedings, coupled with the use by the trial court of the applicant's pre-trial statements to convict him, rendered the trial as a whole unfair.

99. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 28,000 euros (EUR) in respect of non-pecuniary damage.

102. The Government were of the view that a finding of a violation would constitute sufficient just satisfaction for any non-pecuniary damage suffered by the applicant, all the more so because the applicant had had the opportunity to seek the reopening of the criminal proceedings at the domestic level.

103. The Court takes account of the fact that the applicant has the opportunity of filing a request for the reopening of the proceedings previously brought in the Constitutional Court. It considers nevertheless that the applicant must have suffered non-pecuniary damage in the form of distress and frustration, which calls for compensation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under that head.

B. Costs and expenses

104. The applicant also claimed EUR 800 for the costs and expenses incurred before the Court.

105. The Government observed that the applicant had failed to submit bills or invoices, or any confirmation that he had in fact paid the sum sought.

106. 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 were actually and necessarily incurred and are reasonable as to quantum.

107. The applicant has not itemised his claim or submitted any supporting documents. However, in accordance with the principle of equity, the Court considers that there are exceptional circumstances in the present case justifying the making of an award under this head. It underlines in this respect

that the applicant has been represented before the Court by a lawyer who was appointed to him by a national court for the purposes of the domestic proceedings. It appears that that lawyer, convinced that the applicant had suffered injustice, decided to bring his case to the Court. There is, however, no evidence in the case-file to the effect that the applicant's counsel had agreed to represent him before this Court on a *pro bono* basis (see, *mutatis mutandis*, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 187, 20 April 2021). Moreover, there is no doubt that he must have spent some hours preparing the observations which were submitted to the Court (see, *mutatis mutandis*, *Popovych v. Ukraine*, no. 44704/11, § 62, 22 April 2021; and *Strazimiri v. Albania*, no. 34602/16, § 157, 21 January 2020), and the amount claimed by him in this respect is rather low.

108. The Court considers it equitable and reasonable to award the applicant the sum of EUR 800, plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred before the Court. That sum is to be paid directly into the bank account of the applicant's representative (see, *mutatis mutandis*, *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 219, ECHR 2013).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 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:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
      (ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of costs and expenses and to be paid into the bank account of his representative;
   (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 just satisfaction.

Done in English, and notified in writing on 12 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President