



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

FOURTH SECTION

CASE OF CHMURA v. POLAND

(Application no. 18475/05)

JUDGMENT

STRASBOURG

3 April 2012

FINAL

03/07/2012

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

In the case of Chmura v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 18475/05) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Mariusz Chmura (“the applicant”), on 29 April 2005.

2. The applicant was represented by Mr W. Czech, a lawyer practising in Kielce. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his trial had been unfair, in breach of Article 6 of the Convention.

4. On 10 November 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Skarżysko-Kamienna. He was suspected of having participated in an organised criminal gang.

6. On an unspecified date NA, who was a Bulgarian national allegedly involved in procuring prostitution, filed a criminal complaint concerning his abduction and robbery.

7. On 19 April 1999 NA was heard by the prosecutor. He testified that he had been abducted, severely beaten and robbed by several men who had demanded protection money based on the income of foreign prostitutes working under his supervision. NA had identified the applicant as one of his attackers from a photograph.

8. On 23 April 1999 NA identified the applicant during an identity parade. On the same day the applicant and NA were confronted. During the confrontation NA reiterated that he had been severely beaten and robbed by the applicant and his accomplices who had demanded protection money from him. The applicant claimed to be innocent. He stated that he knew NA because he had seen him several times in front of a bar frequented by prostitutes.

9. On 16 July 1999 NA was summoned to testify as a witness in the case. The summons sent to his Bulgarian address was returned with the information that NA was resident in Poland. It appears that subsequently the authorities were unable to locate NA. The investigation was adjourned in order to obtain evidence from another Bulgarian national (ZA) by means of legal assistance from the Bulgarian authorities.

10. On 12 February 2002 the applicant was arrested on suspicion of having kidnapped and robbed NA in November 1998, while acting in an organised criminal gang led by LC. He was charged accordingly and detained on remand on the same day.

11. On 20 February 2002 the applicant was served with the written grounds for his statement of charges. The document stated that in light of the evidence gathered during the investigation, particularly the testimonies of PK (another victim) and NA, there was a reasonable suspicion that the applicant had participated in the abduction and robbery of NA.

12. Simultaneously, in February 2002, the police were still trying to trace NA in order to summon him for further questioning. It appears that he had not returned to Bulgaria and that he had changed his place of residence in Poland. An arrest warrant had been issued for him in a different criminal case in which he was a suspect. On 18 March 2002 the Kielce Regional Prosecutor decided to summon NA for questioning. On the same date NA was arrested and transported for questioning.

13. On 18 March 2002 the applicant's counsel submitted his power of attorney to the Kielce District Court. On the following day a copy of that document was transmitted to the Regional Prosecutor.

14. On 19 March 2002 the Regional Prosecutor heard NA. NA undertook to appear before the Kielce Regional Court on 11 April 2002 to give evidence.

15. On 19 March 2002 the Kielce Regional Prosecutor requested the Kielce Regional Court to hear NA, pursuant to Article 316 § 1 of the Code of Criminal Procedure ("the CCP"). The prosecutor justified his

request by the risk that it might not be possible to hear NA at the trial and submitted that the latter's testimony would be important for the outcome of the case. NA had been heard by the prosecutor on several occasions during the investigation. However, his whereabouts were not established until 18 March 2002. NA had not been residing at the address indicated to the authorities in 1999 and his current address in Poland remained unknown. The prosecutor's request also contained a list of suspects and their defence counsel, including the applicant's counsel.

16. On 20 March 2002 the Kielce Regional Court granted the prosecutor's request to hear NA on 11 April 2002 and decided to notify the applicant, the other co-accused and their counsel of the hearing.

17. On 2 April 2002 the Kielce Regional Prosecutor informed the applicant's counsel that he and his client could consult the case file of the investigation from 12 April 2002 and that the date for the final consultation was fixed for 22 April 2002.

18. The applicant submitted that his counsel had not been notified about the hearing scheduled for 11 April 2002 but that he had learned about it by chance and had appeared at it. The Government maintained that the applicant's counsel had been duly informed.

19. On 11 April 2002 a judge of the Kielce Regional Court heard NA. The hearing was video recorded. The applicant's counsel requested that the hearing be adjourned on the grounds that he had not had the opportunity to consult the case file of the prosecution, at least as regards the part concerning the previous statements of NA. The prosecutor opposed those requests and submitted that the case file had not been made accessible due to the need to protect the witness. The prosecutor acknowledged that the case file would be made accessible to all authorised persons as from the following day. The court refused the request for adjournment since it was not competent to decide on the issue of access to the case file of the investigation without the prosecutor's prior permission. The counsel maintained that hearing the witness without his having consulted the case file would in effect prevent him from defending his client. The court decided to proceed with the hearing of NA. The applicant, his counsel and some of the other co-accused left the courtroom in protest.

20. During the hearing NA described the events in which the applicant and his associates had been allegedly involved. He stated that he recognised the applicant as one of the persons who had committed the alleged offences. Subsequently, he replied to questions put by the prosecutor and two of the accused.

21. On 26 April 2002 the prosecution filed a bill of indictment with the Kielce Regional Court. The applicant was charged with having participated in a criminal gang and with having abducted, deprived of liberty and robbed NA on 2 November 1998. Other members of the same

criminal gang were charged with extortion, robbery, kidnapping and profiting from prostitution.

22. The trial started in July 2002 and the court held in total twelve hearings up to 28 May 2003. The trial court made several attempts to summon NA to the hearings with the assistance of the police. It also sought the assistance of the Bulgarian embassy in Poland in tracking down NA. All efforts failed. At the hearing held on 13 May 2003 the trial court decided to show the video recording of the hearing of 11 April 2002 at which NA had given his testimony.

23. On 4 June 2003 the Kielce Regional Court convicted the applicant of having participated in an organised criminal group and of having abducted, deprived of liberty and robbed NA. LC and other members of the gang were also convicted. The applicant was sentenced to four years' imprisonment and a fine. The court based its judgment to a decisive extent on the testimony of NA, who had identified the applicant and the other co-accused as the persons who had abducted him.

24. The trial court underlined that NA had been heard at the preparatory stage of the proceedings pursuant to Article 316 § 3 of the CCP at the prosecutor's request, having regard to the risk that it might not be possible to hear him at the main hearing. NA was a Bulgarian national and did not have a permanent abode in Poland. The court had unsuccessfully attempted to summon him to appear at the main hearing, but the police's efforts to locate him had been in vain. The court noted that the applicant's counsel had requested permission to consult the case file and to adjourn the hearing of NA; however that request was refused in view of the prosecutor's objection. In this respect the trial court found that the applicant and his counsel had freely forfeited the opportunity to put questions to NA. In the court's view, even without knowledge of the case file, they could have put questions to the witness in relation to the content of his testimony.

25. On 23 October 2003 the applicant's counsel lodged an appeal against the judgment. He complained, relying on Article 6 § 1 of the Convention, that the applicant's defence rights had been breached in that the trial court and the prosecutor had deprived him of the opportunity to have access to the case file of the prosecution prior to the only hearing of the main witness. He maintained that he could not have put questions to the witness without knowing the content of the file, in particular the witness' previous testimony. In that way he was deprived of a possibility to pinpoint major differences in the statements of NA given at various stages of the investigation. The applicant's counsel submitted that the case file had been ready before 11 April 2002, as all investigative actions, except for the hearing of NA, had already been completed. The applicant's counsel argued that this had made the whole trial unfair and that the prosecutor's actions had amounted to a deliberate hindering of his procedural rights.

Moreover, the authorities had allowed NA to leave the country by releasing him and returning his passport although he had committed other offences. Lastly, the applicant's counsel pointed to certain factual inconsistencies in the statements of NA related, *inter alia*, to the date of the alleged abduction as well as the applicant's role in it.

26. On 26 February 2004 the Kraków Court of Appeal dismissed the appeal. It noted that the testimony of NA was the key evidence for the applicant's conviction. With regard to the allegations that the applicant's defence rights had been breached, the Court of Appeal established that the applicant and his counsel had been duly summoned and had appeared at the hearing of NA. It reiterated that the decision whether to allow access to the case file at the investigation stage of the proceedings lay with the prosecutor, and that ensuring the confidentiality of the materials at that stage had been important for the outcome of the investigation. It was for this reason that the CCP authorised the applicant's counsel to examine the case file only at the final stage of the investigation. The fact that the applicant and his counsel were to take part in the hearing of the witness did not make it obligatory for the prosecutor to allow them access to the case file. The prosecutor had noted during the court session on 11 April 2002 that the accused would be progressively allowed to examine the case file as from the following day.

27. The Court of Appeal further noted that it transpired from the minutes of the hearing that the applicant's counsel had requested the adjournment of the hearing with a view to consulting all the evidence in the case file. However, granting such a request would have resulted in a significant delay. It was therefore reasonable for the prosecutor to have refused leave on account of concerns for NA's safety, having regard to the fact that some members of the gang were still at large and that the testimony of that witness was the key evidence in the case. In those circumstances the Court of Appeal found that the court had not acted in bad faith when it went ahead with the hearing of NA in accordance with Article 316 § 3 of the CCP.

28. The Court of Appeal observed that had the applicant's counsel considered it necessary to consult the statements of NA made during the investigation prior to the hearing of NA, and knowing the date fixed for that hearing, he should have filed the relevant request in advance in order to enable the prosecutor to rule on the request. However, the applicant's counsel failed to do so and thus deprived himself of the possibility to appeal against the prosecutor's refusal.

Moreover, had the applicant's counsel been present at the hearing of NA, nothing would have prevented him from putting questions to the witness on the basis of the information he had obtained from his client or with respect to the contents of the witness' testimony given at the hearing. The Court of Appeal concluded that there had been no violation of Article 6 § 1 of the Convention in the case, and the trial court had

correctly found that the counsel and the accused had the right, but not the obligation, to participate in the hearing of a witness carried out under Article 316 § 3 of the CCP. By leaving the courtroom they had waived their right to participate in the hearing of the witness. Further, the Court of Appeal considered in detail the issue of the alleged lack of consistency in NA's statements with regard to the applicant's role in the abduction; however, it rejected them as ill-founded.

29. On 22 July 2004 the applicant's counsel lodged a cassation appeal with the Supreme Court. He raised similar complaints to those set out in his appeal, maintaining that his lack of knowledge of the content of the case file had made the applicant's defence illusory.

30. On 8 December 2004 the Supreme Court dismissed the cassation appeal as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW

31. Article 316 § 3 of the 1997 Code of Criminal Procedure reads as follows:

"If there is a danger that the witness cannot be heard at the hearing, a party or the prosecutor or other body conducting proceedings may submit a request to have the witness heard by a court."

32. Article 156 § 5 of the Code concerns access to the file during investigation. It provides:

"Unless otherwise provided by law, during the preparatory proceedings parties, defence counsel and legal representatives shall be allowed to consult the files and make certified copies and photocopies but only with the permission of the person conducting the preparatory proceedings. With the permission of a prosecutor and in exceptional circumstances access to the files in the preparatory proceedings may be given to another person."

THE LAW

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

33. The applicant complained under Article 6 §§ 1 and 3 (b) and (d) of the Convention that the proceedings in his case had been unfair because he had not been allowed to examine the only witness against him in conditions that would have guaranteed respect for his defence rights. He maintained that the manner in which the witness had been heard by the court had breached the principle of equality of arms. His prosecution

and conviction were based on the inconsistent testimony of the witness whose statements he had effectively been prevented from challenging since he had had no knowledge of the content of the case file against him. Article 6 §§ 1 and 3 (b) and (d) reads as follows:

“1. “In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

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

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;”

A. Admissibility

34. The Government claimed that the applicant had not exhausted relevant domestic remedies. Firstly, he had not appealed against the refusal to allow him to consult the case file under Article 159 of the CCP. Secondly, the applicant had not requested to have the witness NA heard again. Thirdly, he could have lodged a constitutional complaint, challenging the constitutionality of Articles 316 § 3 and 391 § 1 of the CCP which had been applied in his case.

35. The applicant disagreed that any of those remedies would have been effective.

36. The Court considers it appropriate to join the Government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies to the merits of the case.

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

B. Merits

1. The applicant’s submissions

38. The applicant argued that his trial had been unfair as he had been prevented from preparing questions and cross-examining NA whose evidence had served as the sole basis for his conviction. The hearing of NA had taken place before the prosecution had filed the bill of indictment with the court. The prosecutor had taken for granted that it would be impossible to examine that witness at the trial. In those circumstances, the hearing

of NA should have respected the principles of fairness, in particular by giving the applicant's counsel adequate prior notice of the date of the hearing and enabling him to consult the case file, at least as regards the earlier statements of NA. The applicant stated that his counsel had not been notified of the date of NA's hearing and had only appeared at it because he had been present in the court house on the same day for another hearing.

39. The applicant objected to the fact that he had been given permission to consult the part of the case file concerning the earlier testimony of NA only on the day after the hearing of NA. Furthermore, all of the accused were detained and thus posed no threat to the witness. He submitted that the prosecutor's concern for the safety of the witness had been irrelevant. The applicant averred that by refusing him leave to consult the minutes of the testimonies of NA, which included different versions of the events and the alleged role of the applicant, the authorities had prevented his counsel from challenging those contradictions. The proceedings were unfair since the prosecution had had full knowledge of the evidence in the case, while the defence had been totally deprived of access to it.

40. The applicant disagreed with the argument that by leaving the courtroom his counsel had deprived himself of the opportunity to put questions to NA. He observed in this respect that the principle of equality of arms would not have been respected at the hearing owing to his defence counsel's lack of knowledge of the evidence against him. Lastly, the applicant submitted that after the hearing of NA on 11 April 2002, the witness had not appeared in response to the summons of the court. Thus, there was no possibility to challenge NA or his statements at the trial.

2. The Government's submissions

41. The Government submitted that limitations on the right of the accused to have an adequate opportunity to challenge and question a witness against him were compatible with the requirement of a fair trial if they were justified by the need to protect public interests or the fundamental rights of other parties to the proceedings and provided that the rights of the defence have been respected.

42. The Government asserted that pursuant to Article 316 § 3 of the CCP, the investigative authorities had to anticipate the possibility that a witness might not be able to appear at trial. In such cases, the prosecutor could submit a request to have a witness heard by the court in order to minimise the risk that the accused would be unable to challenge the witness' statements. The hearing of a witness under Article 316 § 3 was similar to the oral hearing at the main trial; however, such hearing was in fact part of the preparatory proceedings with all the limitations that applied at that stage of the proceedings. During such a hearing a witness was first granted the opportunity to express himself freely on the case and

later on other parties could put questions to the witness in the order prescribed by the CCP.

43. In the Government's view, the applicant had been given an adequate opportunity to examine NA. Both the applicant and his defence counsel were duly informed about the date and place of the hearing and they both appeared. However, they waived their right to examine the witness since the applicant's counsel left the courtroom and the applicant asked to be escorted back to his cell. Furthermore, the applicant had also had the opportunity to challenge NA's testimony at the trial. A recording of the testimony was shown during the trial and the applicant had contended that some passages in the testimony were inconsistent with other statements of NA.

44. With regard to the issue of access to the case file, the Government maintained that any lack of access to the case file prior to the hearing of NA by the court on 11 April 2002 did not give rise to unfairness. The refusal to allow consultation of the case file was grounded in the necessity to protect NA since the authorities would not have been able to ensure his safety if the hearing had had to be adjourned. Furthermore, the applicant's counsel had requested to consult the case file during the hearing of NA. Had he done so earlier, the prosecutor and the court could have made arrangements to ensure the safety of the witness and thus grant the request.

45. The Government stressed that the applicant had sufficient knowledge of the content of the case file. Not only had he participated in several investigative actions, such as the identity parade, he had also been confronted with the witness NA. He had also received written grounds for the statement of charges.

3. *The Court's assessment*

46. In the recent judgment of the Grand Chamber in the case of *Al-Khawaja and Tahery v. the United Kingdom* (nos. 26766/05 and 22228/06, § 118, 15 December 2011), the Court recalled that the guarantees in paragraphs 3 of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court underlined that its primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, also *Taxquet v. Belgium* [GC], no. 926/05, § 84, 16 November 2010, with further references therein). In making this assessment the Court will look at the proceedings as a whole having regard to the rights of the defence but also to the interests of the public and the victims that crime is properly prosecuted (see *Gäfgen v. Germany* [GC], no. 22978/05, § 175, ECHR 2010-...) and, where necessary, to the rights of witnesses (see, amongst many authorities, *Doorson v. the Netherlands*, 26 March 1996, § 70, *Reports of Judgments and Decisions* 1996-II). Furthermore, the admissibility of evidence is a matter for regulation by national law and the national courts and that

the Court's only concern is to examine whether the proceedings have been conducted fairly (see *Gäfgen*, cited above, § 162, and references therein).

Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings (see *Lucà v. Italy*, no. 33354/96, § 39, ECHR 2001-II; *Solakov v. "the former Yugoslav Republic of Macedonia"*, no. 47023/99, § 57, ECHR 2001-X).

47. There are two requirements which follow from the above general principle. First, there must be a good reason for the non-attendance of a witness. Second, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6 (the so-called "sole or decisive rule"; see *Al-Khawaja and Tahery v. the United Kingdom* [GC], cited above, § 119).

48. Where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], cited above, § 147).

49. In the present case the applicant alleged that the proceedings had been unfair because he had not been given an opportunity to examine the only witness against him. It is not in dispute that the statements of NA were decisive evidence for the applicant's conviction in respect of the charges relating to the abduction and robbery of NA.

50. The Court notes that NA was not heard by the trial court. However, it appears that the Kielce Regional Court made all reasonable efforts to secure NA's attendance at the trial by seeking police assistance as well as enlisting the help of the Bulgarian embassy in Poland (see paragraph 22 above). In those circumstances it was legitimate for the trial court to have resort to the evidence given by NA at the pre-trial hearing held on 11 April 2002. The video recording of that hearing was shown at the trial. The court had the opportunity to observe the conduct of NA during the pre-trial hearing and the applicant was able to contest

the truth of NA's statements (see, *mutatis mutandis*, *Accardi and Others v. Italy* (dec.), no. 30598/02, ECHR 2005-II).

51. The Court further notes that the prosecutor requested the Kielce Regional Court to hear NA at the investigation stage, having regard to the apparent difficulties in tracking down the witness, who was a foreign national, and the importance of his testimony for the case. The request was granted. For the Court those considerations were certainly legitimate, having regard to the interests of the public and victims that crime is properly prosecuted. It further appears that by organising an adversarial hearing of NA at the investigation stage the authorities wished to pre-empt any risk that the crucial witness might not be available to give testimony at the trial (compare and contrast, *Kachan v. Poland*, no. 11300/03, §§ 38-41, 3 November 2009).

52. The applicant claimed that he and his counsel had not been duly summoned to the hearing on 11 April 2002. The Court observes that the applicant was in custody on remand and it appears from the file that he was duly notified of the hearing and brought to it. As regards the applicant's counsel, he alleges that he was not properly notified about the hearing and that his appearance was a mere coincidence. However, the Court finds this assertion uncorroborated, having regard to the documents produced by the parties and, particularly, to the Court of Appeal's findings in this respect (see paragraph 26 above).

53. The other aspect of the applicant's grievance is that he was not in a position to challenge effectively the testimony of NA at the hearing owing to the refusal to allow him to consult the case file of the investigation. The Court does not agree with this argument.

54. Firstly, as noted by the Court of Appeal (see paragraph 28 above), the applicant's counsel could have requested the prosecutor to allow him access to the file earlier than on the date of the hearing (11 April 2002) as he had been notified in good time of the date (20 March 2002).

55. Secondly, the prosecutor's refusal to allow consultation of the case file on the day of the hearing of NA was motivated by concerns for NA's safety which was a legitimate factor, considering that some members of the same gang were still at large. In those circumstances, the Court accepts that there was a degree of urgency in proceeding with the hearing of NA and that it was reasonable to refuse access to the case file in order not to delay the hearing of that witness. The Court is not persuaded that the prosecutor's refusal to allow consultation of the file on the day of the hearing and his earlier decision of 2 April 2002 to authorise consultation of the case file only as from 12 April 2002 reveal any intention to hinder the rights of the defence. It notes in this respect that the final consultation of the case file by defendants and their counsel is the last procedural step before the filing of the bill of indictment with the court.

56. Thirdly, and most importantly, the Court considers that even without prior consultation of the file, there was no real impediment for the applicant's counsel to put questions to witness NA with a view to challenging his testimony. It should be noted that the applicant himself had earlier been confronted with NA who had identified him as one of the perpetrators of the abduction and robbery. In addition, the applicant received the written grounds for the statement of charges against him. This document included, in particular, the facts and evidence which served as the basis for the charges against the applicant. Accordingly, in the Court's view, the applicant and his counsel had sufficient information enabling them to subject NA's credibility to scrutiny and cast doubt on the truth of his depositions. It considers that the refusal of access to the case file prior to the hearing of NA did not prejudice the rights of the defence. Furthermore, the applicant and his counsel would have been able to put questions to NA had they chosen to take part in the hearing on 11 April 2002.

57. Having regard to the foregoing, the Court considers that in the circumstances of the case the applicant had had an adequate opportunity to challenge NA's evidence against him in the context of an adversarial procedure during the investigation stage of the proceedings. Furthermore, the Court of Appeal considered the issue of the alleged lack of consistency in the statements of NA and dismissed the applicant's allegations in this respect as ill-founded. There are no other elements in the case to sustain an argument that the rights of the defence were not respected.

58. Against this background, and viewing the fairness of the proceedings as a whole, the Court considers that the use in evidence of NA's statements given at the hearing on 11 April 2002 was consistent with the requirements of a fair trial and did not result in a breach of Article 6 §§ 1 and 3 of the Convention. Accordingly, there has been no violation of this provision.

59. Having regard to its conclusion that the fairness of the proceedings has not been infringed in the present case, the Court finds that it is not necessary to rule on the Government's objection of non-exhaustion of domestic remedies.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the Government's preliminary objection on the ground of non-exhaustion and *declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 of the Convention and *decides* in consequence that it is not necessary to answer the Government's above-mentioned preliminary objection.

Done in English, and notified in writing on 3 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President