



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

FOURTH SECTION

CASE OF MARIUSZ LEWANDOWSKI v. POLAND

(Application no. 66484/09)

JUDGMENT

STRASBOURG

3 July 2012

FINAL

03/10/2012

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

In the case of Mariusz Lewandowski 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 12 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 66484/09) 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 Lewandowski (“the applicant”), on 30 November 2009.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. The applicant complained that in proceedings in which a court had imposed a penalty of solitary confinement on him he had not received a hearing by an impartial tribunal. He further complained that his right to freedom of expression had been breached.

4. On 10 January 2011 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 (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Elbląg.

6. In 2009 the applicant was serving a prison sentence. On 8 March 2009 he applied for a stay of the execution of his sentence.

7. On 8 June 2009 a penitentiary judge, E.O., refused the application.

8. On 18 June 2009 the applicant lodged an interlocutory appeal against that decision. In his appeal, the applicant referred to a paragraph in the decision in which the judge had referred to his wife's situation instead of his mother's. The relevant part of the applicant's appeal read as follows:

"As to page 3 of the reasoning of the decision, I claim that E.O. must have drafted it under the influence of intoxicating substances, for instance alcohol or other narcotic substances. (...) [H]is mental functions being impaired, I therefore request the Court of Appeal to examine the capacity of that judge to decide cases."

9. On 24 June 2009 his appeal was rejected for failure to comply with the relevant time-limit.

10. On 26 June 2009 Judge E.O. gave a decision imposing on the applicant, as a punishment for his accusation contained in the letter of appeal, twenty-eight days' solitary confinement, referring to section 49 of the Act on Common Courts (*ustawa o sądach powszechnych*, hereinafter referred to as the Courts Act).

11. On 28 June 2009 the applicant appealed against that decision, complaining that the judge had lacked impartiality. He submitted that he had been penalised for exercising his right to freedom of expression and requested the court to stay the execution of the punishment until his appeal had been examined.

12. On the same date the applicant lodged a further appeal against the court's decision of 24 June 2009 to reject his appeal. He submitted that the decision of 8 June 2009 with its reasoned grounds had been served on him late and therefore the seven-day time-limit for lodging an appeal should have been counted from the date of delivery of that decision.

13. On 9 July 2009 Judge E.O. refused to grant a stay of the execution of the decision concerning the applicant's detention in solitary confinement.

14. On 22 July 2009 the Gdańsk Court of Appeal quashed the decision of 26 June 2009, holding that it had been unlawful. The court observed that section 49 of the Courts Act conferred on a judge the power to immediately apply measures necessary to ensure the peaceful conduct of a hearing in a courtroom, including the power to order immediate imprisonment as a penalty for contempt of court or for disturbing order in the courtroom. However, the case-law of the Supreme Court, established in a resolution adopted by a seven-judge bench of that court, had made it clear that these powers could not be used in situations where insults or disparaging statements about a judge or a court had been made in writing, in a context different from that of maintaining order in a courtroom. The Court of Appeal further observed that the applicant had already served the period of detention in solitary confinement imposed by the impugned decision.

15. The Court of Appeal noted in passing that there was disagreement in the doctrine as to the scope of judges' powers to apply section 49 of the Courts Act. Certain writers were of the view that it could also be applied in

other circumstances than those of a hearing or a court session held in a courtroom.

16. On the same date the Gdańsk Court of Appeal dismissed the applicant's appeal against the order of 24 June 2009, finding that it was not open to doubt that the applicant had submitted his appeal against the refusal to stay the execution of his sentence outside the seven-day time-limit, which under the applicable provisions of procedural law had started to run from the date on which the court had read out its decision to the applicant.

17. The applicant later repeatedly complained about Judge E.O.'s conduct and requested that he be excluded from the composition of the penitentiary court dealing with his case in the future.

18. In its reply of 19 August 2009 the President of the Elbląg Regional Court stated that Judge E.O. felt offended by the allegations made in the applicant's letter and that he was envisaging bringing criminal proceedings against the applicant for defamation punishable under Article 212 of the Criminal Code.

19. In its reply dated 29 September 2009, the Gdansk Court of Appeal stated that it had not found any grounds to discipline the judge. It was true that the judge had mistakenly referred to the applicant's non-existent "wife" in one paragraph of his initial decision instead of his mother, on whose situation the applicant had relied in his application, but that did not suffice to pursue disciplinary proceedings against him.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. Section 49 (1) of the Law on Common Courts 2001 (*Ustawa o sądach powszechnych*) reads:

"In case of contempt of a judicial order or insulting a court ... that court is empowered to impose a penalty by fining the person in contempt the amount of up to twice the minimum wage established by law or by depriving that person of [his or her] liberty for a period of up to seven days; in the case of persons already deprived of [their] liberty by either a final judicial decision or [who are in] pre-trial detention, the court is empowered to impose on them the penalties provided for by the provisions governing, respectively, the execution of prison sentences or pre-trial detention."

Article 142 § 1 of the Code of Execution of Sentences provides that solitary confinement can be imposed on a prisoner for a maximum period of 28 days.

21. Article 417 § 1 of the Civil Code provides:

"The State Treasury, or [as the case may be] a self-government entity or other legal person responsible for exercising public authority, shall be liable for any damage (*szkoda*) caused by an unlawful act or omission [committed] in connection with the exercise of public authority."

22. In decision IV CNP 114/09 of 24 June 2010 the Supreme Court held:

“Unlawfulness of a decision, in order to give rise to the State’s compensatory liability, must amount to a manifest breach of law. A decision based on a choice of one of [a number of] possible interpretations of the applicable provisions cannot be regarded as unlawful [for the purposes of Article 417 of the Civil Code], even where that interpretation was subsequently found to be incorrect. Unlawfulness of a final decision can only originate in obvious errors committed by a court, caused by a flagrant breach of the principles of interpretation or application of law. ... Hence, the unlawfulness, in order to give rise to the State’s civil liability, must be of a qualified, fundamental and manifest character: only in such cases can it be said that the court acted unlawfully ... “

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant argued that he had not received a hearing by an impartial tribunal within the meaning of Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Applicability

24. The Government were of the view that Article 6 § 1 of the Convention did not apply to the proceedings concerning the imposition of solitary confinement on the applicant. This provision did not apply to incidental proceedings conducted in the course of criminal proceedings concerning the determination of a criminal charge, even when important procedural issues were determined in them. Such proceedings did not relate to the merits of the criminal case against the applicant. As a consequence, they did not concern the determination of a criminal charge against him. The procedural safeguards laid down by Article 6 of the Convention did not, as a rule, apply to various preliminary measures which could be taken as a part of a criminal investigation before bringing a criminal charge, such as the arrest or interviewing of a suspect (*Escoubet v. Belgium* [GC], no. 26780/95, § 34, ECHR 1999-VII).

25. In the present case, the proceedings in which Judge E.O., sitting as a single judge in the penitentiary court, had imposed on the applicant a penalty of twenty-eight days’ solitary confinement under the provisions of the Courts Act concerning contempt of court, had to be regarded as separate

from the main proceedings concerning the execution of the applicant's prison sentence. The proceedings concerned in the present case had not concerned the substantive examination of issues arising in connection with that sentence.

26. The applicant disagreed. He was of the view that the proceedings – in which such fundamental rights as personal liberty and freedom of expression were at stake – could not be regarded as not covered by the procedural guarantees of Article 6 of the Convention.

27. The Court reiterates that the criteria of applicability of Article 6 under its criminal head have long been established by its case-law as follows: (a) the domestic classification of the offence; (b) the nature of the offence; and (c) the degree of severity of the penalty that the person concerned risked incurring (see, among many other authorities, *Engel and others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22, and *Öztürk v. Germany*, 21 February 1984, §§ 48-50, Series A no. 73). The second and third criteria are alternative and not necessarily cumulative. It is enough that the offence in question is by its nature to be regarded as criminal or that the offence renders the person liable to a penalty which by its nature and degree of severity belongs in the general criminal sphere. This does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 82-86, ECHR 2003-X). It is further noted that the Court has held that Article 6 of the Convention under its criminal head applies fully to proceedings concerning contempt of court in the context of criminal proceedings (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 61, ECHR 2005-XIII).

28. Turning to the first criterion, an offence of contempt of court was defined in the provision of the Act referred to above, which empowered judges to take measures to maintain good order during judicial proceedings. It was not classified in domestic law as a criminal offence. This, however, is not decisive (see, *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 68, Series A no. 80). It cannot be excluded that the imposition of a sentence of solitary confinement on a serving prisoner like the applicant for a breach of internal prison regulations for the purpose of maintaining prison discipline might be considered a purely disciplinary measure and therefore outside the scope of Article 6 (see, *Štitić v. Croatia*, no. 29660/03, § 61, 8 November 2007). However, in the instant case, the sentence imposed on the applicant was unrelated to the maintenance of discipline and order in prison. Moreover, the sentence was imposed on the applicant under the Courts Act, legislation of general application.

29. As to the nature of the offence concerned, the Court notes that the offence of contempt the Court could be committed by any person involved in judicial proceedings. Moreover, the offence of contempt of court

punishable under the Courts Act made the perpetrator liable to penalties intended to punish and deter (see *Ezeh and Connors v. the United Kingdom* [GC], cited above, § 104, ECHR 2003-X; *Anghel v. Romania*, no. 28183/03, § 51, 4 October 2007).

30. As to the degree of severity of the measure, in its case-law the Court determines it by reference to the maximum potential penalty for which the relevant law provides. In the present case the maximum possible sentence was twenty-eight days of solitary confinement (see paragraph 20 above). The Court cannot but regard such a sentence as severe (compare and contrast, *Štitić v. Croatia*, referred to above, § 61, where the sanction imposed consisted in restricting the applicant's free movement inside the prison and his contact with the outside world for a period of three months; see also *Žugić v. Croatia*, no. 3699/08, § 68, 31 May 2011). It further attaches particular importance to the fact that in the present case the sentence of solitary confinement actually imposed on the applicant was the maximum penalty which could be imposed.

31. Therefore, the requirements of Article 6 of the Convention in respect of the determination of any criminal charge, and the defence rights of everyone charged with a criminal offence, apply fully in the present case (see also *Kyprianou v. Cyprus* [GC], no. 73797/01, § 61, ECHR 2005-XIII).

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

B. Merits

1. The parties' submissions

33. The Government averred that the court dealing with the proceedings had been impartial. The decision to apply a penalty of twenty-eight days' solitary confinement had been given by the court, sitting as a bench composed of a single professional judge. That court had been established in a manner consistent with the standards laid down by the Court's case-law. The judge had been permanently appointed, had not been subject to any external pressure, including any guidance emanating from the executive, had been independent and had complied with both the objective and subjective tests of impartiality. There had been nothing to indicate that the judge had been prejudiced against the applicant or hostile towards him, or had had an interest in deciding the case in any particular manner.

34. The applicant was of the view that the court dealing with the issue of contempt of court had not been impartial. The character of the proceedings warranted that the procedural guarantees of Article 6 should have been applied in the proceedings with particular diligence, if only because of the

fact that they had led to a decision which had been immediately enforceable and not subject to an appeal having suspensive effect.

35. In the applicant's view, an appeal against a decision on contempt of court should have suspensive effect. An authority, when informed of a party's intention to appeal against such a decision, should be obliged to suspend the execution of the penalty. In the present case, the applicant had lodged an appeal against the decision, but it had been executed before that appeal had been examined. It was unacceptable that the remedy available to him had thereby been deprived of all practical effect.

36. The applicant further argued that, in respect of a decision he took as a single judge, an individual judge insulted by a party could not be reasonably regarded as impartial towards that party in proceedings concerning liability for the insult if he or she was subsequently called to decide that matter, acting again as a single judge. He referred to the fact that the most severe penalty possible had been imposed on him by Judge E.O.

37. The applicant relied on the Court's judgments in the cases of *Schwarzenberger v. Germany*, no. 75737/01, 10 August 2006, and *Kyprianou v. Cyprus* [GC], no. 73797/01, ECHR 2005-XIII.

38. The applicant further stressed that he had asked the court to stay the execution of the decision imposing twenty-eight days' solitary confinement on him. This request had been refused by Judge E.O., who had given the contested decision. That refusal had further highlighted the lack of objectivity on the part of that judge. He had been well aware that his decision had been contested, but had chosen not to allow the applicant's request. The applicant argued that the execution of the decision should have been stayed.

39. The applicant referred to a letter of the President of the Elbląg Regional Court of 19 August 2009 (see paragraph 18 above) in which the president had stated that Judge E.O. had felt offended and that he had considered instituting defamation proceedings against the applicant. This, in the applicant's opinion, warranted the conclusion that the personal feelings of that judge towards him had been such as to negatively affect his impartiality.

40. The applicant concluded that Judge E.O. had lacked both objective and subjective impartiality.

2. General principles

41. The Court reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public. To that end, Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach – that is, endeavouring to ascertain the personal conviction or interest of a given judge in a particular

case – and an objective approach – that is, determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53, and *Grieves v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII (extracts)).

42. In applying the subjective test, the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will or has arranged to have a case assigned to himself for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86). The principle that a tribunal shall be presumed to be free of personal prejudice or bias is long-established in the case-law of the Court (see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 58, Series A no. 43).

43. Although in some cases it may be difficult to procure evidence with which to rebut the presumption, it must be remembered that the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III).

44. As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect, even appearances may be of some importance (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII; *Morel v. France*, no. 34130/96, § 42, ECHR 2000-VI; and *Kyprianou*, cited above, § 118). When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports* 1996-III, and *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII).

3. *Application of the principles to the circumstances of the case*

45. Turning to the circumstances of the present case, the Court observes that the decision imposing a penalty of solitary confinement on the applicant was provoked by criticism concerning a decision given by a judge in the applicant's case. The judge concerned was the direct object of the applicant's criticism, which questioned his ability to make a sound judicial decision.

46. Like the bench impugned by the applicant in the *Kyprianou* case, the offended judge in the instant case issued the decision imposing a

punishment of solitary confinement on the applicant. No separate proceedings before a differently constituted formation were held to determine the applicant's responsibility in which the applicant could have submitted arguments in his defence, including the justification, if any, for the terms he had employed. The judge simply and summarily gave a decision after he had received the applicant's letter of appeal. The applicant was given no opportunity to react to the possibility of such a finding or put forward his own explanations and representations in this respect.

47. The fact that the judge whom the applicant criticised sat as a single judge in considering whether the criticism of him constituted contempt of court and whether to punish the applicant must have implications for the characterisation of the type of bias in question. In its case-law the Court has already recognised the difficulty of establishing a breach of Article 6 on account of subjective bias and for this reason has, in the vast majority of cases raising impartiality issues, focused on the objective test. However, there is no watertight division between the two notions, since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (the objective test) but may also go to the issue of his or her personal convictions (the subjective test) (see *Kyprianou*, cited above, § 119). The Court further notes that in his letter to the applicant the President of the Elbląg Regional Court stated that Judge E.O. had felt offended by the allegations made in the applicant's letter and that Judge E.O. was envisaging bringing criminal proceedings against the applicant for defamation punishable under Article 212 of the Criminal Code. In these circumstances, given that the judge decided a case concerning criticism directed personally against him alone, the absence of that watertight division is even more pronounced.

48. Hence, the judge assessed the issues arising from the applicant's conduct, determined his guilt and imposed the sanction on him. It is also relevant in the assessment of the case to note that the sanction imposed on the applicant was the most severe sanction possible under section 49 of the Courts Act. In such a situation the confusion of roles between complainant, prosecutor and judge could self-evidently prompt objectively justified fears as to the conformity of the proceedings with the time-honoured principle that no one should be a judge in his or her own cause and, consequently, as to the impartiality of the bench (see *Demicoli v. Malta*, 27 August 1991, §§ 41-42, Series A no. 210).

49. That decision was immediately enforced. The applicant's appeal was examined only after his release. Hence, the procedural defects were only cured upon appeal, and that appeal did not have any practical impact on the applicant's situation.

50. In conclusion, the Court considers that there has been a breach of the principle of impartiality, on the basis of both the objective and subjective

tests. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

51. The applicant complained that his right to freedom of expression had been breached by the decision imposing a penalty of solitary confinement on him. He relied on Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

52. The Government submitted that the applicant had failed to exhaust domestic remedies. He should have sought compensation for pecuniary and non-pecuniary damage caused by the decision imposing a penalty of twenty-eight days’ solitary confinement on him, relying on Article 417 of the Civil Code.

53. The applicant disagreed.

54. The relevant principles regarding exhaustion of domestic remedies in respect of Poland have been set out in the case of *Wizerkaniuk v. Poland*, no. 18990/05, §§ 38-39, 5 July 2011.

55. In the present case, the Government referred to Article 417 of the Civil Code as an effective remedy in situations where a breach of rights guaranteed by the Convention arose from unlawful decisions taken by the State authorities. The Court notes that the decision to place the applicant in solitary confinement was found to be unlawful by the appellate court after the applicant had already served the penalty. The Court acknowledges that the remedy cited exists in domestic law and that it allows a person to seek damages from the State Treasury arising from unlawful decisions given by authorities exercising the State’s powers. However, the Court notes that, under the resolution of the Supreme Court (see paragraph 22) above, only a flagrant and manifest breach of law could give rise to a successful compensation claim under this provision of the Civil Code. It has not been argued, let alone shown, that in the applicant’s case such a manifest breach of domestic law was committed. The Court notes in this connection, firstly, that in its decision of 22 July 2009 the Gdańsk Court of Appeal noted the

discrepancies in the doctrine as to whether section 49 of the Courts Act could be resorted to where insults against a court were proffered in writing (see paragraph 15 above). It notes, secondly, that in its letter of 29 September 2009 (see paragraph 19 above) the Gdańsk Court of Appeal stated that the judge's conduct in the applicant's case did not give rise to disciplinary liability. In addition, the Court observes that the Government have not cited any decisions of the domestic courts indicating that individuals in a situation similar to the applicant's have succeeded in obtaining compensation on the ground of unlawfulness of the State's acts.

56. It follows that the Government's objection must be rejected.

57. The Government abstained from making submissions concerning the merits of this complaint.

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

59. However, the Court considers that the essential issues raised by the applicant were considered above under Article 6 of the Convention (see paragraph 48 above). Accordingly, it does not consider it necessary to examine separately whether Article 10 was also violated.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. Lastly, the applicant complained that the circumstances of the case had amounted to a breach of Articles 3, 5 and 13 of the Convention.

61. The Court observes that the running of the six-month time-limit imposed by Article 35 § 1 of the Convention is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. As regards complaints not included in the initial application, the running of the six-month time-limit is not interrupted until the date when the complaint is first submitted to a Convention organ (see, among other authorities, *Allan v. the United Kingdom* (dec.), no. 48539/00).

62. The Court observes that the applicant raised these complaints for the first time in his reply to the Government's observations. This reply was submitted to the Court on 25 June 2011, whereas the final domestic decision concerning his case had been given by the domestic authorities on 22 July 2009.

63. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 115,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

66. The Government submitted that the claim was excessive.

67. The Court considers that the applicant suffered non-pecuniary damage which would not be sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

68. The applicant did not submit any claims in respect of costs and expenses.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged lack of impartiality on the part of the court dealing with the contempt of court issue and the alleged interference with the applicant's freedom of expression admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine separately the complaint under Article 10 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Lawrence Early
Registrar

David Thór Björgvinsson
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge De Gaetano is annexed to this judgment.

D.T.B.
T.L.E.

SEPARATE OPINION OF JUDGE DE GAETANO

I have voted with the majority even on the third head of the operative part of the judgment (i.e. that it is not necessary to examine separately the complaint under Article 10). To be sure, however, the formula adopted in § 59 is more suitable when the test, to be applied in determining whether or not there has been a breach of more than one article of the Convention, is identical, or at least very similar. In the instant case the test applied for the purpose of Article 6 § 1 is that of the objective and subjective impartiality of the judge. For the purpose of Article 10, however, the test would have been different *toto coelo*: the interference, although possibly necessary in a democratic society for maintaining the authority of the judiciary, was not one prescribed by law (see § 14). There seems to be precious little case-law or guidelines as to when the formula used in § 59 should or should not be applied. In the absence of such case-law or guidelines, the Court's decision that "it does not consider it necessary to examine separately" whether one or more other provisions of the Convention have been breached often appears to lack strict judicial logic.