



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

SECOND SECTION

CASE OF STYRMIR ÞÓR BRAGASON v. ICELAND

(Application no. 36292/14)

JUDGMENT

STRASBOURG

16 July 2019

FINAL

16/10/2019

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

In the case of Styrmir Þór Bragason v. Iceland,

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

Marko Bošnjak, *President*,

Julia Laffranque,

Valeriu Griţco,

Egidijus Kūris,

Ivana Jelić,

Arnfinn Bårdsen, *judges*,

Oddný Mjöll Arnardóttir, *ad hoc judge*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 25 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 36292/14) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Icelandic national, Mr Styrmir Þór Bragason (“the applicant”), on 25 April 2014.

2. The applicant was represented by Mr Ragnar Halldór Hall, a lawyer practising in Reykjavík. The Icelandic Government (“the Government”) were represented by their Agent, Ms Ragnhildur Hjaltadóttir, Permanent Secretary of the Ministry of the Interior.

3. The applicant alleged that the Supreme Court judgment of 31 October 2013 violated his rights under Article 6 of the Convention and Article 2 of Protocol No. 7 to the Convention.

4. Mr Robert Spano, the judge elected in respect of Iceland, withdrew from the case (Rule 28). Accordingly, Ms Oddný Mjöll Arnardóttir was appointed to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

5. On 29 February 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in Reykjavík. At the material time the applicant was the chief executive officer of MP Investment Bank plc (hereinafter “MP bank”).

7. On 2 October 2008 MP bank sent margin calls by email to several owners of guarantee capital certificates in X, a savings bank where the applicant had previously served as board member. The owners of the certificates had financed their purchase with loans from MP bank, secured with a pledge in the certificates themselves. Among these owners were A, the chairman of the board of X, and B, a company of which C, the chief executive officer of X, owned 30%. In the emails, MP bank notified the owners that it had to activate the acceleration clause in section 13 of the loan agreements, which permitted the bank to accelerate loans in exceptional circumstances, because of market conditions and *force majeure*. However, this could be avoided if the owners agreed to change the currency of the loan agreements to Icelandic krónur (ISK).

8. Shortly thereafter, A, C and the applicant had a meeting where it was decided that certificates in X owned, *inter alia*, by A and B would be sold at a certain price, in order for MP bank to retrieve the funds originally loaned to A and B to finance their purchase. It was also decided that the purchase would be financed by X.

9. The applicant suggested that a subsidiary of MP bank would purchase the certificates, but later the purchaser was changed to Y, a private limited company which purchased the certificates in X on 13 October 2008. The certificates were owned by A, B, other staff members of X and MP bank itself. X granted Y a loan of ISK 800,000,000 (approximately 5,230,000 euros (EUR) at the material time) to purchase the certificates, with a pledge in the certificates themselves. On 29 December 2008 X granted Y another loan to purchase additional certificates owned by a reserve member of the board of X.

10. On 7 September 2009 the Financial Supervisory Authority notified the Special Prosecutor that it had instigated an investigation into Y’s purchase of the certificates in X. It referred the case to the Special Prosecutor for investigation, on suspicion of a criminal offence by the directors of X and MP bank.

11. On 22 April 2010, the Financial Supervisory Authority took control of X and removed the bank’s board. The bank’s capital position had fallen short of statutory limits for a considerable time and its board was of the opinion that efforts to resurrect the bank’s financial position would prove unsuccessful. On 3 May 2011, Y was declared bankrupt. The company had no assets except for guarantee capital certificates in X.

12. On 25 June 2010 A and C were indicted under Article 249 of the Penal Code for financial transaction in the form of a loan granted by X to Y, to buy shares in X, without sufficient collateral or an assessment of Y's solvency and assets, and in breach of the bank's internal rules. The applicant was indicted for aiding and abetting the crime of fraud by abuse of position (*umboðssvik*) of A and C under Article 249 cf. Article 22 (1) of the Penal Code by planning, with A and C, that the capital would be paid from X's funds to finance the purchase of the capital certificates owned by the aforementioned owners in October 2008, by deciding the price of the certificates with the co-accused and by acting as an intermediary in Y's purchase of the certificates at the price he had decided along with the co-accused, with an ISK 800,000,000 overdraft loan from X and ISK 43,916,385 in financing from MP bank. In the same transaction, MP bank sold Y 119,244,757 of its own guarantee capital shares in X, and this purchase was also financed with the loan from X. By this transaction, MP bank's investment risk was transferred to X.

13. The applicant was also indicted for money laundering under Article 264 of the Penal Code by accepting the capital obtained unlawfully with the co-accused's fraud by abuse of position, even though he should have been aware, in the light of the circumstances, that the loan guaranteed by the co-accused from X for the transaction was granted unlawfully.

14. The District Court heard testimony from the three defendants, as well as four members and one reserve member of the board of X at the material time, a former co-chief executive officer of X and the chairman of the board of MP bank at the material time. It furthermore heard the testimony of several managers, compliance officers and employees of X and of MP bank, the owner of Y and his business partner and the liquidator of Y.

15. The applicant testified that following the emails of 2 October 2008, a meeting had been held in MP bank to discuss possible solutions. During the meeting, he had proposed that the certificates be purchased by a subsidiary company of MP bank and that X would provide a loan for the purchase, which his co-defendants had said they would consider and bring to a meeting of the board of X. Furthermore, the price of the certificates had been decided. The chairman of the board of MP bank had subsequently not accepted that MP bank's subsidiary purchase the certificates as that would adversely affect MP bank's liquidity. Thus it had been decided that Y step in as buyer, Y's owner having discussed the transaction with the chairman of the board of MP bank. He stated that he had no knowledge of Y's situation. Regarding the 29 December 2008 loan, he stated that he had been contacted by the reserve board member in question who had expressed a wish to sell his certificates. Having previously received word from the owner of Y that he would be interested in purchasing additional certificates, the applicant had asked representatives of X whether X would be willing to

finance the purchase. The applicant denied having any power over the employees of X at the time, or any personal financial interest in the transaction. He stated that he had not been in contact with any representatives of X other than his co-defendants. He noted that MP bank had been a significantly smaller bank at the time and that MP bank had moved all of its transaction banking to X during the financial crisis, indicating the opinion which MP bank's directors had of X at the time.

16. A, the applicant's co-defendant, testified that he and C had met with the applicant to discuss MP bank's margin call of 2 October 2008. A stated that at the meeting, the applicant had proposed that MP bank's subsidiary would purchase the certificates at a certain price and that they had discussed X financing the purchase. A also stated that the applicant had been the only one at MP bank involved. A furthermore stated that he had received word, a few days after the meeting, that MP bank's subsidiary would no longer be the purchaser, but rather Y would purchase the certificates. Regarding the 29 December 2008 loan, A stated that he had contacted the applicant to inquire whether Y would be interested in purchasing additional certificates and that A, C and the applicant had together agreed to put the proposal to the board of X.

17. C, the applicant's other co-defendant, testified that he had spoken to the applicant after MP bank's margin call of 2 October 2008 to discuss the extension of the loan agreements and noted that the applicant had become very insistent towards the employees of X regarding the loan agreements. He and A had therefore met with the applicant, who had proposed that MP bank take over the certificates at a certain price, but C could not remember whether the financing of the transaction had been discussed at the meeting. Before the meeting, MP bank had requested financing from X for the certificates it already owned and those it might acquire following the margin calls, which C stated that he had approved. He furthermore stated that he had known that MP bank wished to move its certificates in X, both those it already owned and the ones it might acquire with the margin calls, to a subsidiary with financing from X. He had been informed by A a few days after their meeting that MP bank had decided to change the buyer of the shares from the subsidiary to Y, and made the necessary arrangements.

18. The chairman of the board of MP bank, D, testified that he had introduced the owner of Y as a possible purchaser in the transaction, but that the applicant had related to him in September 2008 that X wanted to take over the financing of the certificates in X due to the rise in loans and MP bank's margin calls. He had therefore believed X to be the initiator of the transaction. He stated that he had related to the owner of Y that the transaction was an opportunity for Y to acquire certificates with at least substantial financing. D stated that he had been happy with the transaction as it had fixed the bank's liquidity and that he had estimated X's position as strong at the time.

19. The then-director of MP bank's risk management division, E, testified that the applicant had taken over the case of the loan agreements following C's request for a meeting. The conclusion had been that Y would purchase the certificates, with MP bank acting as intermediary, but that deciding a price for the certificates had been difficult as trading in them had been stopped in August 2008.

20. F, a broker with MP bank at the time, testified that the applicant had come to him to discuss the transaction and they had added MP bank's certificates to the list of certificates sold to Y. F testified that earlier the applicant had instructed him to purchase certain certificates, but subsequently to stop purchasing certificates in X. F testified that he had sent information regarding the transaction to employees of X as they had to be brought before its board. Furthermore, F testified that he had subsequently contacted the owner of Y to inquire whether he would be interested in purchasing further certificates.

21. G, the owner of Y, testified that he thought that D had informed him that the applicant would contact him regarding the purchase of certificates in X, and that he had subsequently been in contact with the applicant regarding the transaction. After the first purchase was finalised, the applicant had contacted him to inquire whether he would be interested in purchasing additional certificates.

22. H, G's business partner in Y, testified that the company's operations had ceased before the transaction but that G had contacted him to inquire whether he could use Y to purchase certificates in X. H had accompanied G to X to sign a loan agreement and subsequently gone with him to MP bank to meet the applicant. He testified that the applicant had told them that they stood to make a profit from the certificates' purchase. H furthermore testified that the transaction had moved fast and everything had been prepared at MP bank. He noted that G had intended to take over Y and become the sole owner of the certificates, through Y.

23. By judgment of 29 June 2011, the District Court acquitted the applicant, A and C. The court found that although A and C had granted Y the first loan without assessing its financial situation and thus violated X's rules on lending, as well as violating the rules on competence by participating in granting a loan relating to a transaction to which they were parties, it had not been established that the loan had been granted with insufficient collateral, nor had it been established that they had the intention of abusing their position and endangering X's funds. It was furthermore noted that C had the power to grant loans up to a certain limit against X's rules on lending and that the loan given to Y had been within those limits. As A and C were acquitted of these charges, the applicant was also acquitted of charges as accessory to the crimes of abuse of position and of money laundering.

24. On 5 July 2011 the State Prosecutor appealed to the Supreme Court.

25. By judgment of 7 June 2012, the Supreme Court overturned the District Court's judgment as regards A and C. It found that the granting of the loan by X to Y had been unlawful, and that they were guilty of the charges against them. They were each sentenced to 4 years and 6 months' imprisonment. The Supreme Court's conviction was based on the fact that the District Court had not correctly applied and interpreted Article 249 of the Penal Code.

26. As regards the applicant, the Supreme Court noted that the District Court had acquitted the applicant solely on the basis of the court's conclusion regarding the actions of A and C. The Supreme Court stated that the District Court had not made an independent evaluation of whether and how the oral statements before it had to be assessed as regards the applicant's guilt. The Supreme Court thus annulled the District Court's judgment in respect of the applicant and referred it back for a re-trial.

27. At the re-trial of the case, the District Court heard the applicant, A, C, D, E, F and G.

28. The applicant testified that A and C had requested a meeting with him subsequent to the margin calls of 2 October 2008 and that at that meeting, he had proposed that MP bank's subsidiary would purchase the certificates using the capital it had at the time, and that X would loan to the subsidiary the additional funds it needed to make the purchase. The applicant stated that he had at the time considered X to be in a much stronger position than the three major banks, which were collapsing at the time, and that he had acted with a view to securing MP bank's interests, making the suggestions with the reservation that D approve the proposal. He stated that D had not approved the use of a subsidiary to purchase the certificates and instead proposed Y as purchaser, but that he himself had not discussed the matter with G, the owner of Y. The applicant noted that he had had nothing to do with X giving Y a loan for the purchase, as he had no control in X. Moreover, X's directors, A and C, had told him that they had to bring the matter before the board of X.

29. A testified that at his meeting with the applicant and C, it had been decided that MP bank's subsidiary purchase the certificates using its capital and that X would provide a loan for additional funds for the purchase. Subsequently, the applicant and D had found another purchaser for the certificates but A had not been involved in that process. A stated that he thought that the applicant had proposed the price of the certificates and noted that he had met the applicant when the latter had served as a member of X's board. A furthermore stated that X's financial situation at the time had been good and that investment in the certificates was supposed to be secure.

30. C testified that he had contacted the applicant after the margin call of 2 October 2008 was received, to discuss possible solutions. Subsequently he had met with A and the applicant, where MP bank's interest in taking over

the certificates and placing them in its subsidiary had been expressed. C testified that MP bank and X were in close co-operation and that he understood at the meeting that MP bank had problems with liquidity. C furthermore stated that A had informed him of the change from MP bank's subsidiary to Y, but that he had not been in direct contact with the applicant regarding that change.

31. D testified that A and the applicant had contacted him, informed him that X wanted to take over the financing of the certificates and inquired whether D knew of a potential purchaser. D had then contacted G and inquired whether he would be interested, but D claimed to have known from the start that X would finance the purchase.

32. E testified that he had sent the 2 October 2008 margin calls, and that his understanding had been that the matter would be resolved by MP bank's subsidiary taking over the certificates and their value being used to pay back the loans to MP bank.

33. F testified that he thought that the applicant had informed him by email that Y would replace MP bank's subsidiary as purchaser and that he had subsequently informed C thereof. F stated that the applicant had been directly involved in the transaction but that had not been unusual for large transactions and had happened two or three times before.

34. G, the owner of Y, testified that he had first been in contact with D regarding the transaction but that later he had discussed it with the applicant, including the matter of the financing of the purchase, which he stated had been presented to him as being "included". G testified that he had not been in contact with X except for going there to sign loan documents. He furthermore stated that he had not negotiated the price of the certificates.

35. By judgment of 31 January 2013, the District Court again acquitted the applicant.

36. Firstly, the District Court noted that the case had been initiated by the mail sent by MP bank, accelerating the loans, and that the debtors, including A and B, had not planned to put up any additional collateral for the loans. The applicant had then suggested that a company owned by MP bank would buy the shares and X would finance the purchase. Later, this was changed and Y became the buyer. Secondly, the District Court observed that it had been common knowledge that there had been a shortage of liquid assets in the large Icelandic banks. However, the applicant and other witnesses had agreed that X's situation had been good in this regard, which was supported by documents in the case. The District Court concluded that this had to be taken into account when evaluating the applicant's decision to turn to X for a loan for the certificates. However, it noted that it was obvious that a creditor carried a certain lending risk. With X granting a loan instead of MP bank, that risk had moved to X. The Supreme Court, in its judgment of 7 June 2012, had concluded that this loan had been unlawful. The District Court then noted that the applicant had

denied being aware of how matters had been carried out by X in relation to the granting of the loan to Y. Moreover, it found that his statement in this regard had been credible and supported by other witness statements. The District Court further stated that the applicant had admitted to his involvement in deciding the equity price of the certificates in order for MP bank to receive full payments for its loans. However, that had been normal in the light of his position as CEO of MP bank. He had not been in a position to decide how matters had been carried out by X in relation to the granting of the loan and had not had any part in processing the loan there. Therefore it had, according to the District Court's judgment, not been proved that the applicant should have known that the co-accused had granted the loan in an unlawful manner.

37. On 21 February 2013 the State Prosecutor appealed to the Supreme Court and requested that the applicant be convicted of the charges set out in the indictment and sentenced accordingly.

38. In the proceedings before the Supreme Court, the applicant and the witnesses were not heard again. The applicant submitted written observations and his representative made an oral presentation at a public hearing before the Supreme Court.

39. By judgment of 31 October 2013, the Supreme Court overturned the District Court judgment and convicted the applicant of aiding and abetting the crime of fraud by abuse of position by A and C. The applicant was sentenced to one year's imprisonment.

40. Firstly, the Supreme Court set out the facts of the case, based on the District Court's judgment of 29 June 2011 (acquitting A, C, and the applicant), the Supreme Court's judgment of 7 June 2012, convicting A and C, and the District Court's judgment of 31 January 2013 (acquitting the applicant again). The Supreme Court also set out the summary of the witness statements made before the District Court, including those made by the applicant, A, C, D, E, F, G and others, the transcripts of which were included in the case file. In addition it summarised other documentary evidence in the case, including email communication from the time of the events.

41. Furthermore, the judgment contained the following:

"In the case under appeal, [the applicant] steadfastly denied that he was aware of how matters had been carried out by [X] in relation to the granting of the loan, which was deemed unlawful by the Supreme Court in its judgment in case no. 442/2011 [7 June 2012]. As previously stated, the District Court was of the view that the applicant's statement in the main proceedings was credible, as this is also supported by witness statements. According to section 208 (2) of [the Criminal Procedures Act], the Supreme Court cannot re-evaluate the conclusions of a District Court on the evidentiary value of oral statements, unless the witness or the accused has given statements before the Supreme Court. Such statements were not given. Therefore, the court is bound to take the view that [the applicant] was not familiar with the way in which this lender arranged the loan of [ISK] 800,000,000 to [Y] on 13 October 2008.

On the other hand, there is no reference in the District Court's conclusion to the other aspects of [A and C's] violations, which [the applicant] is charged for aiding and abetting; [however these aspects are discussed] in the documents and statements by [the applicant] and witnesses before the [District] Court. Consequently, there is nothing that hinders the Supreme Court from taking that evidence into account when deciding the case, as long as it regards other facts than the way in which the loan granting was carried out on behalf of [X].

According to Article 22 (1) of the Penal Code any person who, by assisting in word or deed, through persuasion, encouragement or in any other manner, contributes to the commission of an offence shall incur the punishment prescribed for the offence. It is therefore sufficient that a person had been involved in an offence in a culpable way in order to be found guilty of aiding and abetting. However, for a person to be found guilty of aiding and abetting a crime that can only be punished if intentionally committed, it is not necessary that the person in question knew in detail how the violation would be carried out. Consequently, [the applicant's] knowledge of other factors than the way in which the loan was granted by [X] to [Y], may lead to the conclusion that he must have been aware, in light of the prelude to the granting of the loan and all other circumstances considered, that the granting of the loan was not in accordance with the law. Since [the applicant] is charged with aiding and abetting the fraud committed by [A and C], it is necessary in determining whether the applicant's actions fall under Article 249 cf. Article 22 (1) of the Penal Code to have regard to the reasons that led to the conviction of [A and C] in the aforementioned judgment of the Supreme Court, *inter alia* the interpretation of [Article 249 of the Penal Code] which is applied there.

In MP bank's [email] of 2 October 2008 [...] the bank referred to substantial changes in the market, uncertainty and *force majeure* ... [as the reasons] for accelerating the loans which the bank had granted for the purchase of certificates in [X]. At the time, financial institutions were suffering from a severe liquidity crisis, stock markets were highly uncertain and the three largest banks in the country were about to collapse. As previously stated, it cannot be inferred from the case documents that the loan recipients mentioned in the indictment objected to the debt collection mentioned in the letter, or that they intended to put up additional collateral for the loans granted by MP bank. The applicant had knowledge of this situation and, as has previously been established, the case documents contain several emails detailing his communication with some of the loan recipients in question on the topic of the collection of the loans, but that communication dated all the way back to June 2008. They revealed that the bank generally did not grant loans only with pledges in unlisted shares unless the loan-to-value ratio was at least 150%, in addition to which surety was sometimes required.

As previously stated [the applicant], [A] and [C] met on 6, 7 or 8 October 2008, but around that time it became clear that the three major banks would collapse. According to their testimony, [A] and [C] agreed to [the applicant]'s plan that [X] would grant a loan to [MP bank's subsidiary] to buy certificates in [X]. These certificates were on the one hand pledged to MP bank as collateral for loans granted by the bank for their purchase, and on the other hand certificates owned by the bank itself. These certificates, which according to the plan would be paid for largely by a loan from [X], were of a total nominal value of 242,260,151 ISK, of which the certificates owned by the bank's nominal value was 119,244,757 ISK.

The three of them [the applicant, A and C] agreed on the purchase price of the certificates in the proposed transaction. As previously stated, [the applicant] testified that he had proposed the price after having received calculations from MP bank's loan

division. The rate, and thus the purchase price, had assumed that MP bank would receive full payment for the loans it had granted for the certificates' purchase, as [the applicant] had been protecting the bank's interests. With reference to this and other elements which have been established in the case, including information on the rate of certificates in [X] in transactions with them done with MP bank's intermediation in August 2008, it is established that the purchase price, which [the applicant] proposed and became the basis for the transaction, was not based on the certificates' real value at the time.

The plans mentioned above all came to pass except the fact that [Y], which as previously stated was majority-owned by [G], replaced [MP bank's subsidiary] as the purchaser of the certificates. The reason for that was that [D], the chairman of the board of MP bank, did not approve that a subsidiary of the bank purchase the certificates. In his testimony to the District Court, [the applicant] stated that [D] had told him that he had spoken with [G] and subsequently the directors of [X] had been informed of the new purchaser of the certificates. Furthermore, [the applicant] stated that he had, on behalf of [G], requested that [X] "finance this package". As previously stated, the certificates which had been purchased with financing from MP bank had been pledged to the bank and, according to [the applicant], the owners of those certificates had not been willing to put up additional collateral for those loans. In accordance with that, [the applicant], [A] and [C] were all aware that the transaction would be handled in the manner described by [C] before the District Court. That plan was in fact inconsistent with the bank's position when, as lender, it sent the [email] of 2 October 2008. Relying on [the applicant]'s testimony regarding his involvement with the transaction in question, he had no reason to suppose that [X] would, contrary to what was presumed, demand more collateral for the loan to [Y] than a pledge in the purchased certificates.

It can be concluded from the case file, among other things from the email communications between [MP bank] and [the owner of Y], that [the applicant] was aware of the poor financial situation of the company belonging to [the owner of Y]. According to the statements of [the owner of Y, A and C], [the owner of Y] was only in contact with [the applicant] and [the Chairman of the Board of MP bank] regarding the financing of the purchase. [The owner of Y] stated that [the applicant] and [the Chairman of the Board of MP bank] had promised that X would finance the purchase, which it in fact did after an [employee of MP bank] announced to [C], on behalf of [the applicant], that [Y] would purchase the shares instead of [the company owned by MP bank].

According to the aforementioned, it is beyond reasonable doubt that [the applicant] participated, to no lesser extent than [A] and [C], in planning how matters should be carried out in granting the loan by [X] to [Y] to purchase the guarantee capital certificates in [X]. With the said business transaction, which was largely financed by [X], the risk of loss because of the capital certificates, which had rested on MP bank, where [the applicant] was the chief executive officer, was transferred to [X]. By doing so the bank had all its claims on the owners of the certificates paid in full, and the owners, *inter alios* [A] and [B], which [C] had a large share in, were relieved of their obligations. Furthermore, the bank sold its own certificates at a price that did not, as previously stated, represent their real value at the time. Taking into account [the applicant's] knowledge, which has previously been described, his education and knowledge of bank operations and financial institutions, the court agrees with the prosecution that [the applicant] should have known that the loan granted by [X] to [Y] on 13 October 2008 had been unlawful and could cause [X] significant financial risk, as it later turned out, [X] lost all the money that it had lent to [Y]. Accordingly [the

applicant], with the actions described in the indictment, is guilty of aiding and abetting [A] and [C's] fraud by abuse of position. As stated above, [since] it has to be considered that [the applicant] was not aware of how matters had been carried out by [X] in relation to the granting of the loan to [Y], the Supreme Court considers that it has only been proved that his intent in the aiding and abetting concerned a conduct which is punishable by up to two years' imprisonment according to Article 249 of the Penal Code. The provision rules out the use of Article 264 [of the Penal Code] as it was worded at the time of the offence."

42. On 1 December 2013 the applicant was dismissed from his employment in an investment bank in the light of the outcome of the Supreme Court's judgment.

II. RELEVANT DOMESTIC LAW

43. The relevant provision of the Icelandic Penal Code No. 19/1940 (*Almenn hegningarlög*) at the material time read as follows:

Article 22

"Any person who, by assisting in word or deed, through persuasion, encouragement or in any other manner, contributes to the commission of an offence under this Act shall incur the punishment prescribed for the offence.

..."

Article 249

"If a person who has been put in a position to do something that will bind another person in an obligation, or who has control of funds on behalf of other persons, abuses this position, the person shall be punished by up to 2 years' imprisonment, and in the case of a very serious offence the punishment may be increased to up to 6 years' imprisonment."

Article 264

"Any person who accepts, or acquired for himself/herself or other persons gain derived from an offence according to this Act shall be subject to fines or imprisonment up to 2 years. The same penalty shall be applicable to a person who stores or moves such gain, assists in the delivery thereof or in another comparable manner supports securing for another the gain of an offence. In the case of reiterated offence or one of a major character the maximum penalty is 4 years' imprisonment.

..."

44. The relevant provision of the Criminal Procedures Act, No. 88/2008 (*Lög um meðferð sakamála*) at the material time read as follows:

Section 196

"Within the limits arising from other provisions of this Act, appeal against a District Court judgment lies to the Supreme Court in order to obtain:

- a. a re-examination of the determination of penalties;

- b. a re-examination of conclusions based on the interpretation or application of rules of law;
- c. a re-examination of conclusions based on the evaluation of the evidentiary value of documentation other than oral statements before the District Court;
- d. invalidation of the judgment and remittal of the case;
- e. dismissal of the case by the District Court.

When a judgment is appealed against, a re-examination may also be sought of rulings and decisions made during court proceedings before the District Court.

If a District Court judgment is appealed against for any of the reasons listed in the first paragraph of this Section, revision of the court's conclusions regarding a claim pursuant to Chapter XXVI may also be sought, provided that it has been materially resolved and the defendant or claimant has requested a re-examination. If a District Court judgment is not appealed against pursuant to the above, the defendant and the claimant may both appeal against the court's adjudication on the merits of the claim pursuant to the rules on appeals of judgments in civil lawsuits."

Section 204

"The Supreme Court can pronounce a judgment dismissing a case from the court due to flaws in its presentation to the court without a hearing having previously taken place. Similarly, the Supreme Court may quash a District Court's judgment if there are material flaws in the procedure before the District Court and dismiss a case from the District Court if essential elements of the preparation of the legal action have been flawed.

Should the submissions or arguments in a case be defective without those defects requiring the dismissal of the case or the quashing of the District Court judgment, the Supreme Court may instruct the parties to provide documentation regarding certain elements or take other action to remedy the defects.

Before the main proceedings in a case, the Supreme Court may hold hearings to decide on procedural matters. The parties shall be notified of such hearing with reasonable notice."

Section 205

"...

The Supreme Court can decide that oral presentation of evidence should be submitted as deemed necessary by the court if there is reason to believe, in light of the circumstances, that said presentation of evidence could have an effect on the outcome of the case."

Section 208

"...

The Supreme Court cannot re-evaluate the conclusions of a District Court on the evidentiary value of oral testimony, unless the witnesses in question or the defendant have given oral statements before the Supreme Court.

Should the Supreme Court consider that the conclusion of a District Court concerning the evidentiary value of oral testimony in court may be incorrect so as to materially affect the outcome of the case, and the witnesses or defendant in question

have not given oral testimony before the Supreme Court, the Supreme Court may quash the judgment of the District Court as well as its procedure to the extent necessary for oral testimony to be given before the District Court, and for the case to be resolved anew. Should a District Court judgment be quashed in such a manner, three judges shall deal with the case in a new trial before the District Court and they may not be the same judges as previously dealt with the case.”

45. According to the Criminal Procedures Act, judicial proceedings can be reopened under certain conditions. Section 228 of the Act states that when a District Court judgment has not been appealed against or the time-limit to appeal has passed, the Committee on Reopening of Judicial Proceedings can approve a request from a person who considers that he or she has been wrongly convicted, or convicted of a more serious offence than he or she committed, to reopen the judicial proceedings before the District Court, if certain conditions are fulfilled. The conditions are, *inter alia*, that there were serious defects in the processing of the case which affected its conclusion (item d). The State Prosecutor can request a reopening to the advantage of the convicted person if he considers that the conditions in paragraph 1 of section 228 of the Code are fulfilled. In accordance with section 229 of the Act, the request for reopening shall be in writing and sent to the Committee on Reopening of Judicial Proceedings. It shall include detailed reasoning on how the conditions for reopening are considered to be fulfilled. According to section 231 of the Act, the Committee on Reopening of Judicial Proceedings decides whether proceedings will be reopened. If a request for reopening is approved the first judgment remains in force until a new judgment is delivered in the case. Section 232 of the Act states that the Committee on Reopening of Judicial Proceedings can accept a request for the reopening of a case which has been finally decided by the Court of Appeal or the Supreme Court and a new judgment will be delivered if the conditions of section 228 are fulfilled.

THE LAW

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

46. The applicant alleged that the Supreme Court judgment of 31 October 2013 entailed a violation of his right to a fair hearing as provided in Article 6 § 1 of the Convention, which in so far as relevant reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ...hearing...”

47. The Government contested that argument.

A. Admissibility

48. 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*

49. The applicant observed that an appeal court's decision not to hear a defendant has to be justified and that the nature of the offence and the effect a conviction would have on the defendant's life should be taken into account. In this respect the applicant referred to, *inter alia*, *Botten v. Norway*, 19 February 1996, *Reports of Judgments and Decisions* 1996-I. Moreover, he submitted, the principle of direct assessment of evidence implied that a higher court cannot convict a person who has been acquitted by a lower court, unless the former has heard the testimony of the accused and the witnesses relied on by the latter.

50. The applicant noted that domestic law in Iceland had changed in this respect to accommodate the Court's judgment in *Sigurþór Arnarsson v. Iceland* (no. 44671/98, 15 July 2003). Nevertheless, in his view the Supreme Court had still failed to change its practice *de facto*.

51. In the present case the principle of direct assessment of evidence contained in Article 6 had been violated, because the Supreme Court, in its judgment of 31 October 2013, reversed his acquittal and based his conviction and punishment on a reassessment of the value of the oral statements given by the applicant and the witnesses before the District Court, without those having been heard before the Supreme Court. He pointed out that the District Court had concluded that the applicant's statement had been credible and in accordance with the witnesses' statements. In these circumstances, also under national law, namely by virtue of sections 205 and 208 of the Act on Criminal Procedure, the Supreme Court should have summoned him and the witnesses to give testimony before overturning his acquittal.

52. Moreover, the applicant alleged that the Supreme Court had based his conviction on arguments and conclusions presented in the Supreme Court's previous judgment of 7 June 2012 convicting A and C. That judgment had not contained a substantive discussion of the charges against the applicant, and no statements had been given by him or other witnesses before the Supreme Court in those proceedings either.

53. The importance of having his testimony heard directly before the Supreme Court was further reinforced in the light of the serious consequences that the conviction had for him. It will be recalled that besides

the sentence, the applicant also lost his employment and was excluded from working in the financial markets for 10 years following the judgment.

54. The Government maintained that there had been no violation of Article 6 of the Convention since the Supreme Court had not based its conviction of the applicant on a re-assessment of the evidentiary value of the testimony given before the District Court, and it had therefore not been obliged to hear him directly.

55. The Government pointed out, among other things, that there had been two sets of proceedings before the District Court during which counsel for the defence, the applicant and witnesses were heard. An oral hearing had been held before the Supreme Court in both sets of proceedings, where counsel for the defence and the prosecutor were heard. Pursuant to section 196(1) of the Criminal Procedures Act the Supreme Court had had full jurisdiction to examine questions of fact as well as questions of law, including the evidentiary value of documentary evidence other than oral testimony given before a District Court.

56. The Government also noted that according to the Court's case-law, where a court of appeal has full jurisdiction to examine points of both law and fact, Article 6 § 1 does not always require a public hearing or, if a hearing is held, a right to be present in person, even if the court of appeal can overturn an acquittal. The structure of the Icelandic judicial system thus complied with the requirements of Article 6.

57. Moreover, in the present case the Supreme Court specifically pointed out that it could not and did not reassess the value of the applicant's testimony given before the District Court regarding his unawareness of the way in which X had processed the loan to Y. The Supreme Court noted, however, that when acquitting the applicant the District Court had not made an assessment regarding the other violations committed by A and C, which the applicant was charged with aiding and abetting. Accordingly, nothing hindered the Supreme Court from assessing the evidence relating to these violations, be it documents or recordings of testimony which it had before it. Referring to Article 22 § 1 of the Penal Code, the Supreme Court pointed out that in order to establish intent for aiding and abetting, it was not a requirement that the person in question be fully aware of how the violation would occur. The applicant's knowledge of factors other than the way in which the loan was granted from X to Y could therefore lead to the conclusion that he must have been aware, in the light of the prelude to the granting of the loan and all other circumstances considered, that the granting of the loan was not in accordance with the law. Accordingly, the Government pointed out, insofar as the Supreme Court made its own assessment of the facts, it primarily built on documentary evidence or confined itself to witness testimony regarding undisputed facts, and the Supreme Court only deviated from the District Court's conclusions

regarding questions of law, not from its assessment of the evidentiary value of statements.

58. The Government also submitted that the applicant had not elaborated on why it would have been useful for his defence to have been heard before the Supreme Court. He had not addressed the evidence on which his conviction had been based or how his statement could have led the Supreme Court to conclude differently in his case.

59. Moreover, as regards the applicant's argument that the Supreme Court's judgment was heavily based on its judgment against A and C, the Government pointed out that the applicant had been a party to those proceedings and had in no way been hindered in defending himself. The Government disagreed with the applicant's understanding that the Supreme Court had based its conviction on the conclusions in the Supreme Court's judgment of 7 June 2012.

60. Finally, when sentencing the applicant, the Supreme Court gave him the benefit of the doubt regarding the seriousness of his criminal intent, which according to Section 249 of the Penal Code affects the maximum penalty which could be imposed. The Supreme Court thus stated that since it had to be considered that the applicant was not aware of how matters had been carried out by X in relation to the granting of the loan to Y, the Supreme Court considered that it had only been proved that his intent in the aiding and abetting concerned conduct which was punishable by up to two years' imprisonment.

2. *The Court's assessment*

(a) **The general principles**

61. The Court reiterates that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any specific rules on the admissibility of evidence or the way evidence should be assessed, which are therefore primarily matters for regulation by national legislation and the domestic courts (see, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, 21 January 1999, *Kashlev v. Estonia*, no. 22574/08, § 40, 26 April 2016, and *Lazu v. the Republic of Moldova*, no. 46182/08, § 34, 5 July 2016). It is not the function of the Court to deal with errors of fact or of law allegedly committed by a domestic court unless and in so far as they may have infringed rights and freedoms protected by the Convention. In the determination of whether the proceedings were fair the Court does not act as a court of fourth instance deciding on whether the evidence had been obtained unlawfully in terms of domestic law, its admissibility or on the guilt of an applicant. These matters, in line with the principle of subsidiarity, are the province of the domestic courts. It is not appropriate for the Court to rule on whether the available evidence was sufficient for an applicant's conviction and thus to substitute its own

assessment of the facts and the evidence for that of the domestic courts. The Court's only concern is to examine whether the proceedings have been conducted fairly and that in a given case they were compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case (*Murtazaliyeva v. Russia* [GC], no. 36658/05, § 149, 18 December 2018).

62. As to the scope of this case, the Court notes from the outset that the applicant complained, with reference to the general right to a fair hearing in Article 6 § 1 of the Convention, that the Supreme Court had re-evaluated the oral evidence without hearing either the applicant in person or the witnesses. As to the latter, no reference was made to the right to hear witnesses under Article 6 § 3(d) of the Convention. The Government also centred their arguments on Article 6 § 1. The Court for its part sees no need to examine any part of the complaint under Article 6 § 3(d) of its own motion, as the application does not concern the right to hear witnesses "under the same conditions" as the prosecution, but rather the general right to a "fair hearing" in Article 6 § 1. Thus, the Court considers that the complaint may suitably be dealt with under that provision (see *Sigurþór Arnarsson v. Iceland*, cited above, § 29).

63. The Court reiterates that the manner of application of Article 6 § 1 to proceedings after appeal, including to supreme courts, depends on the special features of the proceedings involved; account must be taken of the entirety of the procedural system in the domestic legal order and of the role of the particular court therein (see, *inter alia*, *Botten v. Norway*, cited above, § 39, *Sigurþór Arnarsson v. Iceland*, cited above, § 30, and *Lazu v. the Republic of Moldova*, cited above, § 33). Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 § 1, although the appellant was not given an opportunity to be heard in person by the appeal court.

64. Furthermore, even if the appellate court has jurisdiction to examine both points of law and of fact, Article 6 § 1 does not always require an oral hearing or, if a hearing takes place, that the accused is allowed to be present in person and to address the court directly (see, *inter alia*, *Botten v. Norway*, cited above, § 39, and *Sigurþór Arnarsson v. Iceland*, cited above, § 30). It may also be that the accused unequivocally has waived his right to take part in the appeal hearing (see, *inter alia*, *Kashlev v. Estonia*, no. 22574/08, § 51, 26 April 2016). However, the Court has held that where an appellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence it cannot, as a matter of fair trial, properly determine those issues without a direct assessment of the evidence given in person by the accused – who claims that he has not committed the act alleged to constitute a criminal offence (see *Constantinescu v. Romania*, no. 28871/95, 27 June 2000, with

reference to *Ekbatani v. Sweden*, 26 May 1988, § 32, Series A no. 134; see also *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004). To this end, there is a close link to the Court's established case-law to the effect that in the determination of a criminal charge the defendant should, as a general rule, be heard by the tribunal convicting him (see, *inter alia*, *Sándor Lajos Kiss v. Hungary*, no. 26958/05, § 22, 29 September 2009).

65. It is true, as emphasized by the Government, that the Court has held that the fact that an appeal court is empowered to overturn an acquittal by a lower court without summoning the defendant and without hearing the latter or witnesses in person does not as such and on its own infringe the fair hearing guarantees in Article 6 § 1 (see *Botten v. Norway*, cited above, § 48).

66. However, the Court's case-law also demonstrates, in line with the Court's general approach already described (see paragraph 64 above), that if the appeal court has jurisdiction to examine afresh factual issues either as to the question of guilt or as to the sentencing, or both, the right to a fair hearing according to Article 6 § 1 may, depending on the particular circumstances of the case, bar the appeal court from convicting an accused who has already been acquitted by the lower court. Taking into account what is at stake for the accused, the overall question would be whether the appeal court could, "as a matter of fair trial, properly examine the issues to be determined without a direct assessment of the evidence" given by the accused or the witness in person (see *Botten v. Norway*, cited above, § 52).

67. Moreover, the Court's case-law on this matter, when seen as a whole and in its context, draws a distinction between situations in which an appeal court which reversed an acquittal without itself hearing the oral evidence on which the acquittal was based not only had jurisdiction to examine points of fact as well as points of law but actually proceeded to a fresh evaluation of the facts, and situations in which the appeal court only disagreed with the lower court on the interpretation of the law and/or its application to the established facts, even if it also had jurisdiction in respect of the facts. For example, in the case of *Igual Coll v. Spain*, no. 37496/04, § 36, 10 March 2008, the Court considered that the appeal court had not simply given a different legal interpretation or another application of the law to facts already established at first instance, but had carried out a fresh evaluation of facts beyond purely legal considerations (see also *Spînu v. Romania*, no. 32030/02, §§ 55-59, 29 April 2008, *Andreescu v. Romania*, no. 19452/02, §§ 65-70, 8 June 2010, *Almenara Alvarez v. Spain*, no. 16096/08, 25 October 2011). Similarly, in *Marcos Barrios v. Spain*, no. 17122/07, §§ 40-41, 21 September 2010, the Court held that the appeal court had expressed itself on a question of fact, namely the credibility of a witness, thus modifying the facts established at first instance and taking a fresh position on facts which were decisive for the determination of the

applicant's guilt (see also *García Hernández v. Spain*, no. 15256/07, §§ 33-34, 16 November 2010).

68. Conversely, in *Bazo González v. Spain*, no. 30643/04, 16 December 2008, the Court found that there had not been a violation of Article 6 § 1 on the ground that the aspects which the appeal court had been called on to analyse in order to convict the applicant had had a predominantly legal character, and its judgment had expressly stated that it was not for it to carry out a fresh evaluation of the evidence; rather, it had only made a different legal interpretation from that of the lower court (contrast *Sigurþór Arnarsson v. Iceland*, cited above, § 34, and *Mihaiu v. Romania*, no. 43512/02, § 38, 4 November 2008, in which the Court emphasised the predominantly factual nature of the issues.) A similar conclusion was reached in *Keskinen and Veljekset Keskinen Oy v. Finland*, no. 34721/09, 5 June 2012. However, as explained by the Court in *Suuripää v. Finland*, no. 43151/02, § 44, 12 January 2010, one must at this point take into account that "the facts and the legal interpretation can be intertwined to an extent that it is difficult to separate the two from each other."

69. Finally, if the direct assessment of the evidence is deemed necessary for the reasons explained above, the appeal court is under the duty to take positive measures to this effect, notwithstanding the fact that the applicant did not attend the hearing, ask for leave to address the court or object, through his counsel, to a new judgment being given (see *Botten v. Norway*, cited above, § 53, and *Sigurþór Arnarsson v. Iceland*, cited above, § 38). In the alternative, the appeal court must limit itself to quashing the lower court's acquittal and referring the case back for a retrial.

(b) Application of those principles to the present case

70. In the present case, the Court notes that the applicant was acquitted by the District Court after a full adversarial hearing at which evidence, including oral testimony from the applicant and witnesses, was taken. The fairness of those proceedings is undisputed.

71. The prosecution appealed against the applicant's acquittal to the Supreme Court, which held a hearing at which the applicant's representative presented oral arguments. The case file before the Supreme Court comprised transcripts of the oral proceedings before the District Court and all documents submitted in the proceedings before the latter. Before it, the Supreme Court also had its judgment of 7 June 2012 convicting A and C.

72. The Supreme Court had full jurisdiction to examine questions of fact as well as questions of law, including the evidentiary value of documentary evidence; however, it could not re-evaluate oral evidence given before the District Court without rehearing it. The Supreme Court, without rehearing the oral evidence, convicted the applicant of aiding and abetting the crime of fraud by abuse of position by A and C. The question before the Court, therefore, is whether, in these circumstances, the Supreme Court could, as a

matter of fair trial, properly examine the issues to be determined without a direct assessment of the evidence given by the applicant and the witnesses in person.

73. The Court notes that the District Court acquitted the applicant because he had not been aware of how matters had been carried out by X in relation to the granting of the loan to Y. It had, according to the District Court's judgment, not been proved either that the applicant – based on what could be inferred from the facts that were apparent to him – should have known that the co-accused had granted the loan in an unlawful manner (see paragraph 36 above).

74. In its judgment the Supreme Court did not specifically re-evaluate the District Court's findings as to whether the applicant actually knew how the loans in question had been processed. However, according to the Supreme Court's interpretation of Article 22 (1) in conjunction with Article 249 of the Penal Code, for a person to be found guilty of aiding and abetting fraud, it was not necessary that the person actually knew in detail how the fraud would be carried out. In the applicant's case it was, according to the Supreme Court's findings, sufficient that other factors, which were apparent to the applicant having regard to his education and knowledge of financial institutions and the general circumstances at the material time, were of such a nature that the applicant could not have avoided knowing that the transaction in question was illegitimate and that he therefore "must have been aware, in light of the prelude to the granting of the loan and all other circumstances considered, that the granting of the loan was not in accordance with the law". Moreover, since the District Court had not in its conclusions made any assessment of the value of the testimony before it relating to such "other factors" there was, in the Supreme Court's view, nothing that hindered it from taking that evidence into account when deciding the case, as long as it regarded facts other than the way in which the granting of the loan was carried out on behalf of X. On this basis the Supreme Court concluded that "it is beyond reasonable doubt" that the applicant participated, to no lesser degree than A and C, "in planning how matters should be carried out in granting the loan" by X to Y, and that he also "should have known" that the loan "had been unlawful" (see paragraph 41 above).

75. The Government argued that, insofar as the Supreme Court had made its own assessment of the facts, it primarily had relied on documentary evidence, or confined itself to witness testimony regarding undisputed facts, and that therefore the Supreme Court had only deviated from the District Court's conclusions regarding questions of law, not from its assessment of the evidentiary value of statements.

76. The Court is not persuaded by the Government's submissions, for the following reasons.

77. It is true that in legal terms the assessment of whether somebody, based on that person's knowledge of other factors, "must have been aware" of a loan having been granted in an unlawful manner may be distinguished from the assessment of whether that person actually knew the details of how the loan was processed. Accordingly, the Court accepts that although the distinction may be subtle, it was in principle possible for the Supreme Court to conclude as it did without calling into question the District Court's assessment of the applicant's statements in this respect before the District Court on this particular point.

78. However, when the Supreme Court found that the applicant "must have been aware" that the loan had been granted in an unlawful manner, the Supreme Court took a somewhat broader approach than the District Court as to which factors, from a legal perspective, were relevant for the assessment. Moreover, this broader legal approach led the Supreme Court to build its conviction of the applicant on a broader factual base than the District Court had done in its judgment. Thus, even if the Supreme Court's initial disagreement with the District Court was of a purely legal nature, the Supreme Court's application of the law inevitably also implied that the Supreme Court had to make a new and broader assessment of a factual nature. It emerges from the Supreme Court's judgment that it based this new assessment on the documents of the case, including transcripts of the applicant's and the witnesses' statements before the District Court beyond what transpired from the District Court's judgment (see paragraph 41 above).

79. As the Government pointed out, the Supreme Court relied to a large extent on facts that were not as such disputed and which appeared from the written evidence. On this point the Court agrees with the Government that the applicant's case might be distinguished from *Sigurþór Arnarsson v. Iceland* (cited above). However, although the underlying facts were neither particularly complicated nor disputed as such, the case before the Supreme Court had a certain complexity. Moreover, the issue to be determined by the Supreme Court was whether the applicant – inferring from what he did know at the material time and what he was able to observe and had the capacity to understand – "must have been aware" that the loan was illegal. This clearly had a strong subjective dimension. The Court cannot but assume that in such matters the perception and perspective of the accused and those directly involved, and thus their statements, might have a bearing (compare with *Botten v. Norway*, cited above, § 49 and *Suuripää v. Finland*, cited above, § 44).

80. In addition, the Court attaches weight to the fact that the Supreme Court sentenced the applicant to one year's imprisonment without even having the benefit of a prior assessment of the penalty by the lower court which had heard the applicant directly (see, *inter alia*, *Botten v. Norway*,

cited above, § 50, *Sigurþór Arnarsson v. Iceland*, cited above, § 35, and *Zahirović v. Croatia*, no. 58590/11, § 57, 25 April 2013).

81. The applicant faced serious charges. He ran the risk of a relatively severe penalty. Furthermore, bearing in mind the character of the offence in question, the Court sees no reason to doubt that the outcome of the proceedings could have adversely affected the applicant's professional career. Indeed, the criminal conviction and sentence resulted in the applicant's dismissal from his employment (see paragraph 42 above).

82. Furthermore, although the Supreme Court was not under a formal obligation by virtue of sections 196, 205 or 208 of the Criminal Procedures Act to summon the applicant to give testimony before overturning his acquittal the Court considers, in the light of the circumstances of the present case, that the applicant could reasonably have expected the Supreme Court to summon him or other witnesses to give statements before the court, should it be minded to overturn the District Court's acquittal and convict him in accordance with the charge.

83. Having regard to the entirety of the proceedings before the Icelandic courts, to the role of the Supreme Court at the material time and to the nature of the issues adjudicated, the Court finds that there were no special features to justify the fact that the Supreme Court did not summon the applicant and relevant witnesses and hear evidence from them directly, before passing a judgment under section 196 of the Criminal Procedures Act. It follows from the Court's case-law that this conclusion is not altered by the fact that the Supreme Court had access to the transcripts of the oral hearings in the applicant's case before the District Court (see *Sigurþór Arnarsson v. Iceland*, cited above, § 36).

84. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 § 1 OF PROTOCOL No 7 TO THE CONVENTION

85. The applicant complained that his right to appeal had been breached in contravention of Article 2 of Protocol No. 7 to the Convention which provides:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

86. The applicant maintained that his right to appeal had been violated as the Supreme Court, in its judgment of 31 October 2013, had based his

conviction on arguments and conclusions which had been presented in the Supreme Court's judgment of 7 June 2012 against A and C. These arguments had not been a part of his case before the District Court during the second proceedings and he had not been able to defend himself against these arguments. Moreover, the Supreme Court had failed to hear him and the witnesses.

87. The Government disagreed with the applicant's understanding of the Supreme Court's judgment of 31 October 2013 claiming that the court based its conclusions on the Supreme Court's judgment of 7 June 2012. In the former judgment, the Supreme Court had evaluated the evidence independently. The Government also referred to the exception in Article 2 § 2 of Protocol No. 7 to the Convention.

88. The Court refers to the wording of Article 2 § 2 of Protocol No. 7, which expressly accepts that the right to appeal is limited "in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal". Accordingly, the fact that there was no possibility of appeal against the Supreme Court's conviction and sentencing of the applicant does not, in itself, raise any issue under the Convention (see, for example, *Kashlev v. Estonia*, cited above, § 52). Moreover, insofar as the applicant refers to the fairness of the proceedings before the Supreme Court leading up to the judgement of 31 October 2013, this does not raise a separate issue under Article 2 § 2 of Protocol No. 7.

89. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

92. The Government submitted that the claim for non-pecuniary damage was excessively high.

93. Taking account of the particular circumstances of the present case, the Court considers that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage. The Court further notes that it is for the respondent

State to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation or violations found by the Court and to redress as far as possible the effects. In this regard, the Court observes that sections 228 and 232 of the Criminal Procedures Act provide that the Committee on Reopening of Judicial Proceedings can, when certain conditions are fulfilled, order the reopening of criminal proceedings that have been terminated by a final judgment rendered in the Court of Appeal or the Supreme Court (see, *mutatis mutandis*, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, § 315, 30 September 2016, and *Ramos Nunes de Carvalho E Sá v. Portugal* [GC], nos. 55391/13, 57728/13 and 74041/13, § 222, 6 November 2018). In this regard, the Court emphasises the importance of ensuring that domestic procedures are in place whereby a case may be re-examined in the light of a finding that Article 6 of the Convention has been violated. As the Court has previously stressed, such procedures may be regarded as an important aspect of the execution of its judgments and their availability demonstrates a Contracting State's commitment to the Convention and to the Court's case-law (*Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 99, 11 July 2017).

B. Costs and expenses

94. The applicant also claimed EUR 29,900 (ISK 3,858,508) for the costs and expenses incurred before the domestic courts, and EUR 27,600 (ISK 3,572,499) for those incurred before the Court. The above amounts included value-added tax (VAT).

95. The Government did not oppose the costs incurred in the domestic proceedings but found the amount excessive as to the costs incurred before the Court.

96. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, taking into account that the domestic costs were not incurred in order to prevent or remedy the violation found at the Supreme Court level, the Court dismisses the claim in respect of the costs of the domestic proceedings. On the other hand, it considers it reasonable to award the applicant EUR 7,500 in respect of the costs of the proceedings before the Court (see, *inter alia*, *Egill Einarsson v. Iceland*, no. 24703/15, § 60, 7 November 2017).

C. Default interest

97. 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 under Article 6 § 1 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 the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, 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* unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Marko Bošnjak
President