



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

AFFAIRE BELZIUK c. POLOGNE

CASE OF BELZIUK v. POLAND

(45/1997/829/1035)

ARRÊT/JUDGMENT

STRASBOURG

25 mars/March 1998

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SUMMARY¹

Judgment delivered by a Chamber

Poland – fairness of criminal appeal proceedings

I. ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

A. Government's preliminary objections*1. Lack of jurisdiction ratione temporis*

Central fact giving rise to applicant's complaint took place after Poland accepted Court's jurisdiction.

2. Failure to exhaust domestic remedies

Essence of applicant's complaint was refusal of Regional Court to grant him leave to be present at appeal hearing to defend himself in person – domestic remedies exhausted in that respect.

Conclusion: objections dismissed (unanimously).

B. Merits of complaint*1. General principles*

Reiteration of case-law on right to fair trial.

2. Application of general principles to instant case

Regional Court empowered to consider questions of both fact and law – applicant intended to contest his conviction and adduce evidence – issues to be determined by Regional Court could not properly have been examined without direct assessment of evidence given by applicant in person – applicant's interests not represented at appeal since no counsel present on his behalf – immaterial that he chose not to be legally represented – under Article 6 §§ 1 and 3 (c) he had right to be present at appeal and defend himself in person.

Prosecutor's submissions before Regional Court directed at having applicant's appeal dismissed – respect for principle of equality of arms and right to adversarial proceedings required that applicant be allowed to attend hearing and contest submissions of prosecutor.

Conclusion: violation (unanimously).

1. This summary by the registry does not bind the Court.

II. ARTICLE 50 OF THE CONVENTION

A. Non-pecuniary damage

Judgment in itself sufficient just satisfaction (unanimously).

B. Costs and expenses

Claim disallowed – specifications of costs claimed submitted too late – claim dismissed (unanimously).

COURT'S CASE-LAW REFERRED TO

13.7.1983, Zimmermann and Steiner v. Switzerland; 26.10.1984, De Cubber v. Belgium; 2.3.1987, Monnell and Morris v. the United Kingdom; 26.5.1988, Ekbatani v. Sweden; 28.8.1991, Brandstetter v. Austria; 29.10.1991, Helmers v. Sweden; 21.9.1993, Kremzow v. Austria; 19.2.1996, Botten v. Norway; 20.2.1996, Lobo Machado v. Portugal; 22.2.1996, Bulut v. Austria; 16.9.1996, Akdivar and Others v. Turkey; 25.6.1997, Van Orshoven v. Belgium; 25.11.1997, Zana v. Turkey; 27.11.1997, K.-F. v. Germany

In the case of Belziuk v. Poland¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr THÓR VILHJÁLMSÓN,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr J.M. MORENILLA,

Mr J. MAKARCZYK,

Mr P. JAMBREK,

Mr U. LÖHMUS,

Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 1 December 1997 and 24 February 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) and by the Polish Government (“the Government”) on 23 April 1997 and 13 June 1997 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 23103/93) against the Republic of Poland lodged with the Commission under Article 25 by a Polish national, Mr Antoni Belziuk, on 31 May 1993.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Poland recognised the compulsory jurisdiction of the Court (Article 46). The Government’s application referred to Article 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 §§ 1 and 3 (c) of the Convention taken together.

Notes by the Registrar

1. The case is numbered 45/1997/829/1035. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 31). The lawyer was given leave by the President on 21 October 1997 to use the Polish language in the written and oral proceedings (Rule 28 § 3).

3. The Chamber to be constituted included *ex officio* Mr J. Makarczyk, the elected judge of Polish nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 28 April 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr R. Macdonald, Mr J.M. Morenilla, Mr P. Jambrek, Mr U. Löhmus and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr C. Russo, substitute judge, replaced Mr Macdonald who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 4 June 1997, the Registrar received the applicant's memorial on 9 October 1997 and the Government's memorial on 13 October 1997.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 November 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr K. DRZEWICKI, Professor of public international law, *Agent*,
 Ms E. CHAŁUBIŃSKA, Judge on secondment to
 the Ministry of Justice,
 Ms M. WĄSEK-WIADEREK, Legal Adviser,
 Ministry of Foreign Affairs,
 Ms M. SYKULSKA, Lecturer in public international law, *Counsel*;

(b) *for the Commission*

Mr B. MARXER, *Delegate*;

(c) *for the applicant*

Mr J. GAŁKOWSKI, Advocate, Bielsko-Biała Bar, *Counsel*.

The Court heard addresses by Mr Marxer, Mr Gałkowski and Mr Drzewicki.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Gorlice, Poland.

7. On 31 May 1992 he was arrested on suspicion of having attempted to steal a car and on 2 June 1992 was remanded in custody.

8. The trial took place on 24 September, 15 October and 25 November 1992 before the Tarnów District Court (*Sąd Rejonowy*). The District Court heard as witnesses the owner of the car and his neighbour as well as the police expert, who confirmed that the door lock had been tampered with in an attempt to open it. The court also considered as evidence a bag containing instruments, which could have been used to open the car lock. The bag had been found in the close vicinity of the applicant at the time of his arrest. The applicant was present during the trial. According to the Government the applicant had chosen not to be represented by a lawyer.

9. On 25 November 1992 the District Court convicted the applicant of attempted theft and sentenced him to three years' imprisonment. It found the evidence of the witnesses to be exhaustive and logical and their statements consistent.

10. The applicant filed an appeal against this judgment with the Tarnów Regional Court (*Sąd Wojewódzki*). He maintained in particular that the first-instance court had disregarded his explanations and had only attached weight to the prosecution evidence. He also requested that his accomplice and the two policemen who had arrested him be heard as witnesses and that he be brought from prison to the hearing before the Regional Court.

11. On 21 April 1993 the Regional Court refused the applicant's request to be brought before it, considering that his presence was unnecessary, since he had already given a detailed account of the events at his trial before the District Court. Moreover, in his written statement of appeal he had set out at length his complaints in respect of the contested conviction. Furthermore, in its view he had sufficient time to submit further observations in writing, if he wished to do so.

12. On 10 May 1993, after a hearing at which the public prosecutor, but not the applicant, was present (see paragraph 14 below), the Regional Court dismissed the applicant's appeal.

13. The Regional Court had heard the prosecutor's submissions to the effect that the judgment of the lower court should be upheld, and it considered that the District Court had thoroughly assessed the evidence and had carefully considered the applicant's guilt, as shown by the fact that the applicant had been acquitted on one of two charges. The Regional Court found that the evidence given by the applicant was inconsistent and

motivated by his wish to avoid conviction. Moreover, the applicant had failed to request the District Court to hear further evidence. It noted that the applicant had only submitted a request to have the policemen who had arrested him heard when lodging his appeal. However, the Regional Court considered it unnecessary to hear the witnesses as the other evidence presented to the District Court was sufficient to prove the applicant's guilt.

II. RELEVANT DOMESTIC LAW

14. The relevant provisions of the Polish Code of Criminal Procedure in force at the material time read as follows:

Article 69

“An accused, who does not have a lawyer of his own choice, may request the assistance of an officially appointed lawyer if he proves that he is not able to incur the costs of defence without detriment to himself and his family.”

Article 399

“A court of appeal shall conduct a hearing when examining a case...”

Article 400 § 1

“A hearing shall be held irrespective of whether the parties are present. However, a hearing shall not be held if the public prosecutor is absent...”

Article 401

“If a case is to be examined at a hearing, the court may order an accused, who is detained, to be brought to the hearing.”

Article 402

“1. An appellate court cannot take evidence.

2. However, the court can exceptionally take evidence at a hearing ... if it would expedite proceedings...”

15. The Code of Criminal Procedure provided at the material time for two-instance proceedings. Regional courts considered, *inter alia*, appeals against judgments of district courts. Only remedies of an extraordinary character were available against a judgment given by a regional court in appeal. Since then the Code of Criminal Procedure has been amended and now provides for cassation proceedings in respect of judgments of appellate courts.

16. Article 383 of the Code of Criminal Procedure prohibits an appellate court from increasing a sentence imposed by a trial court if the appeal was lodged by a defendant.

17. The Prosecution Authorities Act 1985 provides that the prosecution service is composed of the Principal Public Prosecutor and subordinate public prosecutors. Public prosecutors are independent in carrying out their duties. However, they are under an obligation to follow the instructions of higher ranking prosecutors.

III. POLAND'S DECLARATION OF 1 MARCH 1993 UNDER ARTICLE 46 OF THE CONVENTION

18. In a declaration of 1 March 1993, deposited with the Secretary General of the Council of Europe by the Polish Minister for Foreign Affairs, Poland recognised the jurisdiction of the Court in the following terms:

“The Government of the Republic of Poland, pursuant to Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature in Rome on 4 November 1950, declares that it recognises, for a period of three years with effect from 1 May 1993, as compulsory *ipso facto* and without special agreement, on condition of reciprocity on the part of the other Contracting Parties, the jurisdiction of the Court of Human Rights in all matters concerning the interpretation and application of the aforementioned Convention.

The validity of this Declaration may be renewed by tacit agreement for periods of three years, if the Government of the Republic of Poland, by notification to the Secretary General of the Council of Europe, does not denounce this Declaration by giving at least six months' notice before the expiry of the first period or of the subsequent periods.”

PROCEEDINGS BEFORE THE COMMISSION

19. Mr Belziuk applied to the Commission on 31 May 1993. He raised several complaints under Articles 5, 6 §§ 1, 2 and 3 (c) and (d), 7 § 1 and 14 of the Convention. In particular, he complained that the public prosecutor had not heard his accomplice and alleged that certain letters, which he had written to the public prosecutor and the District Court, had been destroyed by the public prosecutor. He also complained that the public prosecutor had served him with the document containing charges against him on 19 August 1992, although this document was dated 2 June 1992, and that he had been obliged to sign it against his will. The applicant further complained about the partiality of the proceedings before the District Court, its assessment of the evidence and the fact that a more severe penalty imposed on him as a recidivist gave rise to discrimination. He also complained about the

proceedings before the Regional Court, submitting in particular that he had been refused leave to be present at the hearing, that the Regional Court had failed to reply to his request for legal aid and that he had not been granted the assistance of an officially appointed lawyer.

20. On 29 November 1995 the Commission declared the application (no. 23103/93) inadmissible with the exception of the complaint under Article 6 §§ 1 and 3 (c) relating to the fairness of the proceedings before the Tarnów Regional Court. In its report of 26 February 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 in conjunction with Article § 3 (c). The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

21. In his memorial and at the hearing the applicant asked the Court to hold that there had been a breach of Article 6 § 1 read together with Article 6 § 3 (c) of the Convention and to award him just satisfaction under Article 50 of the Convention.

The Government for their part requested the Court both in their memorial and at the hearing to declare the case inadmissible on account of, firstly, the Court's lack of jurisdiction *ratione temporis* and, secondly, the failure of the applicant to exhaust domestic remedies. In the alternative, they requested the Court to reject the applicant's complaint as disclosing no breach of the Convention.

AS TO THE LAW

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

22. Mr Belziuk maintained that he had been deprived of the right to defend himself in person before the Tarnów Regional Court. He also submitted that the principle of equality of arms had been violated as he had not been granted leave to attend the appeal hearing, whereas the public prosecutor had been present at the hearing and made submissions to the

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

Regional Court. He relied on Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention, which provide as relevant:

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

...

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

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

A. The Government’s preliminary objections

23. The Government, as they did before the Commission, raised two preliminary objections, one based on the Court’s lack of jurisdiction *ratione temporis* and the other on the applicant’s failure to exhaust domestic remedies.

1. Lack of jurisdiction ratione temporis

24. The Government maintained, as their primary submission, that the Court had no jurisdiction in the instant case, given that the applicant’s complaints with respect to Article 6 §§ 1 and 3 (c) concerned acts, decisions and events which took place before 1 May 1993, the date on which Poland recognised the compulsory jurisdiction of the Court (see paragraph 18 above). In this respect they stressed that these complaints were rooted in the decision of the Tarnów Regional Court of 21 April 1993 to refuse him leave to be present at his appeal hearing (see paragraph 11 above) and for that reason the Government’s responsibility for the alleged shortcomings of the appeal hearing on 10 May 1993 could not be engaged under the Convention.

25. The applicant agreed with the Commission’s admissibility decision. The Commission found that the decision refusing the applicant leave to be present at his appeal before the Regional Court, even though it had been taken before 30 April 1993, subsequently affected his position as regards the exercise of his defence rights in the proceedings which took place after that date. It followed that the complaints relating to the Regional Court’s proceedings could not be rejected as being outside the Commission’s competence *ratione temporis*.

26. The Court notes that Poland accepted its jurisdiction in respect of all matters concerning the interpretation and application of the Convention with effect from 1 May 1993 (see paragraph 18 above). However, it considers that in the instant case the central fact giving rise to the applicant's complaint was not the decision of the Tarnów Regional Court of 21 April 1993, but rather the appeal hearing held on 10 May 1993 (see paragraph 12 above). It is that hearing, at which the public prosecutor but not the applicant was present, whose conformity with Article 6 §§ 1 and 3 (c) of the Convention must be determined. Accordingly, this preliminary objection must be dismissed (see, *mutatis mutandis*, the Zana v. Turkey judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, pp. 2545–46, § 42).

2. Failure to exhaust domestic remedies

27. In the alternative, the Government pleaded the applicant's failure to exhaust domestic remedies contrary to Article 26 of the Convention, which provides:

“The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

They pointed to the fact that the applicant failed to request the assistance of an officially appointed lawyer under Article 69 of the Polish Code of Criminal Procedure (see paragraph 14 above) and they argued that since Article 6 § 3 (c) of the Convention provides for the right to defend oneself in person or through legal assistance, such a failure amounted to the non-exhaustion of domestic remedies in respect of his complaint.

28. The applicant maintained throughout the proceedings before the Commission and the Court that he had made an application for the assistance of an officially appointed lawyer in a letter of 29 April 1993 and that he had in any event exhausted domestic remedies by asking the Regional Court for leave to be present at the appeal hearing and to defend himself in person (see paragraph 11 above).

29. The Commission considered that the issue of the applicant's failure to request legal assistance, as invoked by the Government, was unrelated to the question whether he in fact exhausted domestic remedies.

30. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 26 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system (see, *inter alia*, the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 65).

31. The Court notes that there is a disagreement as to whether in fact the applicant requested the assistance of an officially appointed lawyer.

Notwithstanding, the Court recalls that the essence of the applicant's complaint is the refusal of the Tarnów Regional Court to grant his request to be present at his appeal hearing and to defend himself in person (see paragraphs 10 and 11 above). In these circumstances he must be considered to have exhausted available and sufficient remedies provided by the national legal system in respect of his complaint. The Government's preliminary objection of non-exhaustion of domestic remedies must accordingly be dismissed.

B. Merits of the complaint

1. Arguments of those appearing before the Court

(a) The applicant

32. The applicant contended that the appeal hearing held on 10 May 1993, at which only the public prosecutor had been present, constituted a violation of his right to a fair trial and in particular his right to a hearing in his presence and the principle of equality of arms. Despite his request for leave to attend the hearing, he was not allowed to be present. In his view his presence at the appeal hearing was vital since the Tarnów Regional Court was competent to consider both legal and factual issues raised by his case. Furthermore, the applicant pointed out that, contrary to the Government's submissions (see paragraph 35 below), the public prosecutor had not acted at the hearing as the guardian of the public interest but as his opponent, since the public prosecutor had asked the appellate court to reject his appeal against the judgment of the trial court.

(b) The Government

33. The Government maintained that although appellate courts in Poland may consider questions of both fact and law, questions of fact may be dealt with only to a very limited extent (see paragraph 14 above) and decisions are usually taken on the basis of the trial court's case file. If there is a need to take full evidence, the appellate court must quash the judgment and send the case back to the trial court for reconsideration.

34. With respect to the role of the public prosecutor in Polish criminal procedure, the Government contended that it is not restricted merely to prosecution but also extends to the protection of the public interest. Although public prosecutors are obliged to follow the instructions of their superiors, they are nevertheless independent and impartial and are required to treat all citizens as equal before the law (see paragraph 17 above).

35. The Government pointed out that in the instant case questions of fact were not raised during the appeal hearing. There were no exceptional circumstances at issue which would have required the appellate court to take evidence and hear the applicant, since he had already presented his case in the first-instance court. The applicant failed to make written submissions to the Tarnów Regional Court after his request to be brought to the appeal hearing had been rejected (see paragraph 11 above). Furthermore, as the public prosecutor had not appealed against the judgment of the trial court, the appellate court could not increase his sentence (see paragraph 16 above). Accordingly, the public prosecutor was present at the appeal hearing not in the capacity of prosecuting authority but as the guardian of the public interest.

(c) The Commission

36. Before the Court, the Delegate of the Commission recalled that the principle of equality of arms includes the fundamental right to adversarial criminal proceedings, which right is intended to guarantee an opportunity to both parties to comment on each other's submissions. However, in the instant case this principle was not respected since the applicant was not allowed to participate in the appeal hearing and thus could not reply to the public prosecutor's submissions, which included a recommendation to the Regional Court to dismiss his appeal. For this reason, the Commission had unanimously concluded that there was a violation of the applicant's right to a fair trial.

2. The Court's assessment

(a) General principles

37. Bearing in mind the prominent place which the right to a fair trial holds in a democratic society (see, *inter alia*, the De Cubber v. Belgium judgment of 26 October 1984, Series A no. 86, p. 16, § 30), the Court recalls at the outset the fundamental principles which emerge from its jurisprudence relating to Article 6 § 1 in conjunction with paragraph 3 (c), relevant to the instant case:

(i) Criminal proceedings form an entity and the protection afforded by Article 6 does not cease with the decision at first instance. A State is required to ensure also before courts of appeal that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in this Article (see, *inter alia*, the Monnell and Morris v. the United Kingdom judgment of 2 March 1987, Series A no. 115, p. 21, § 54; and the Ekbatani v. Sweden judgment of 26 May 1988, Series A no. 134, p. 12, § 24).

(ii) A person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance trial hearing. However, the personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing. Indeed, even where an appellate court has full jurisdiction to review the case on questions both of fact and law, Article 6 does not always entail rights to a public hearing and to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant (see, *inter alia*, the above-mentioned Ekbatani judgment, p. 12, § 25; the *Helmert v. Sweden* judgment of 29 October 1991, Series A no. 212-A, p. 15, §§ 31–32; and the *Kremzow v. Austria* judgment of 21 September 1993, Series A no. 268-B, p. 43, §§ 58–59).

(iii) The principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes the fundamental right that criminal proceedings should be adversarial. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may secure that this requirement is met. However, whatever method is chosen, it should ensure that the other party is aware that observations have been filed and gets a real opportunity to comment thereon (see, *inter alia*, the *Brandstetter v. Austria* judgment of 28 August 1991, Series A no. 211, p. 27, §§ 66–67 and the *Lobo Machado v. Portugal* judgment of 20 February 1996, Reports 1996-I, pp. 206–07, § 31).

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

38. The Court notes that the Tarnów Regional Court was empowered to consider questions of both fact and law (see paragraph 14 above). The applicant, who was not allowed to be present at the hearing on his appeal, intended to contest his conviction and to adduce evidence in support thereof (see paragraphs 10 and 11 above). Taking into account what was at stake for Mr Belziuk, who had been sentenced to three years' imprisonment, the Court does not consider that the issues to be determined by the Tarnów Regional Court when adjudicating on the appeal could, as a matter of fair trial, properly have been examined without a direct assessment of the evidence given by the applicant in person (see, *mutatis mutandis*,

the *Botten v. Norway* judgment of 19 February 1996, *Reports* 1996-I, p. 145, § 52). Had he been present at the appeal hearing, he would have had an opportunity to challenge his conviction and the submissions of the public prosecutor and to present evidence in support of his appeal. It is also to be noted that the applicant's interests were not in fact represented at the appeal since there was no counsel present on his behalf. It is immaterial that he chose not to be legally represented, as the Government have maintained (see paragraph 8 above). Under Article 6 §§ 1 and 3 (c) of the Convention taken together he had the right in the circumstances to be present at his appeal and to defend himself in person. It follows that the applicant's right to a hearing in his presence has been violated.

39. The Court recalls that the Government maintained that the public prosecutor, who had not appealed against the judgment of the trial court, was present at the appellate hearing not in the capacity of prosecuting authority but as the guardian of the public interest (see paragraph 35 above). However, the prosecutor's submissions before the Tarnów Regional Court were directed at having the applicant's appeal dismissed and his conviction upheld. In so doing his role was that of a prosecuting authority in the traditional sense (see the *Van Orshoven v. Belgium* judgment of 25 June 1997, *Reports* 1997-III, pp. 1050–51, §§ 37–38). Respect for the principle of equality of arms and the right to adversarial proceedings therefore required that the applicant be allowed to attend the hearing and to contest the submissions of the public prosecutor. Nor can it be maintained in the circumstances that the resulting inequality could have been redressed had the applicant availed himself of the opportunity to forward written submissions to the Regional Court (see paragraph 35 above), having regard both to the presence of the public prosecutor in the courtroom and to the forcefulness of his oral statements (see, *mutatis mutandis*, the *Bulut v. Austria* judgment of 22 February 1996, *Reports* 1996-II, pp. 359–60, §§ 47-49).

40. In conclusion, having regard to the prominent place held in a democratic society by the right to a fair trial, the Court finds a violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) of the Convention.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

41. The applicant claimed just satisfaction under Article 50 of the Convention, which provides:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non-pecuniary damage

42. Mr Belziuk sought 20,000 US dollars for non-pecuniary damage. He submitted that such a sum was necessary in order to encourage the Government to end the widespread practice of violating at appellate hearings rights guaranteed under Article 6 §§ 1 and 3 (c) of the Convention.

43. The Government submitted that in the event that the Court found a violation, this finding would in itself constitute sufficient just satisfaction. In the alternative, they requested the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in criminal cases, having regard to national circumstances.

44. The Delegate of the Commission submitted that, in view of the alleged violations of the applicant's rights, a reasonable sum for non-pecuniary damage should be awarded.

45. In the circumstances of the instant case, the Court considers that the present judgment constitutes in itself sufficient just satisfaction (see, *mutatis mutandis*, the K.-F. v. Germany judgment of 27 November 1997, *Reports* 1997-VII, p. 2676, §§ 75–77).

B. Costs and expenses

46. The applicant also claimed 5,000 US dollars by way of legal costs and expenses incurred in the preparation and defence of his case before the Convention institutions. He asserted that the amount claimed was in line with the costs and expenses actually incurred.

47. The Government did not comment on the applicant's claims for reimbursement of costs and expenses.

48. The Delegate of the Commission supported the applicant's claim. He recalled that the applicant had received legal aid from the Council of Europe to assist him with his proceedings before the Convention institutions, but that this covered only part of the costs and expenses actually incurred. He also noted the high cost of legal services in Poland and the pioneering nature of the work undertaken by the applicant's counsel in view of the fact that the present case was only the second Polish case pleaded before the Court.

49. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, *inter alia*, the Zimmermann and Steiner v. Switzerland judgment of 13 July 1983, Series A no. 66, p. 14, § 36). However, the Court notes in this respect that the applicant, who received legal aid from the Council of Europe before the Convention institutions, only submitted specifications of the costs claimed by him as late as 23 February 1998, almost three months after the date of the hearing. In these circumstances the Court cannot accept the applicant's claims.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention taken together;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any alleged non-pecuniary damage;
4. *Dismisses* the applicant's claim for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 March 1998.

Signed: Rudolf BERHNHARDT
President

Signed: Herbert PETZOLD
Registrar