



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

SECOND SECTION

CASE OF SIGURÐÓR ARNARSSON v. ICELAND

(Application no. 44671/98)

JUDGMENT

STRASBOURG

15 July 2003

FINAL

15/10/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Arnarsson v. Iceland,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNDSSON,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 May 2002 and 24 June 2003,

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

PROCEDURE

1. The case originated in an application (no. 44671/98) 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 Sigurþór Arnarsson (“the applicant”), on 10 November 1998.

2. The applicant was represented by Mr Magnús Thoroddsen, a lawyer practising in Reykjavík. The Government were represented by their Agent, Ms Björg Thorarensen, Director at the Ministry of Justice and Ecclesiastical Affairs.

3. The applicant alleged that, in breach of Article 6 § 1 of the Convention, when convicting and sentencing him – and, in doing so, overturning his acquittal by the District Court – the Supreme Court based itself on a reassessment of the oral evidence given before the District Court, without having heard either the witnesses or the accused himself.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 21 May 2002, the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1), the Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is an Icelandic national, born in 1971 and living in Iceland.

9. According to the applicant, around 1 a.m. on 13 May 1997 he, accompanied by 4 other persons, including Mr S.T.E., entered a night-club, named Vegas, in Reykjavík. After a while the applicant had an argument with a certain Mr S.S., whereupon the latter arm-locked the applicant's throat and both fell to the floor. A fight broke out involving S.T.E. and two of S.S.'s friends. Doorkeepers tried to stop the fight but S.T.E. knocked S.S. unconscious, following which he fell on his back and hit the back of his neck on the floor. The applicant and his companions left the night-club in a hurry for S.T.E.'s home.

10. When, shortly thereafter, the police officers arrived at the scene, a man was lying unconscious on a sofa in the innermost part of the premises. According to the summary of facts found in the national courts' judgments referred to below, the police officers had been told that he had been struck on the head and that four persons, three men and one woman, had attacked him, struck him, treated him roughly and kicked him in the head. The person who was said to be mainly responsible was nicknamed Silli, a reference to the applicant. The persons in question were also said to have beaten two of S.S.'s friends, resulting in visible injuries. The former had then left the night-club. The police reports recording the witness evidence were not entirely clear. Investigators of the National Bureau of Investigation had not been called immediately and arrived at the scene after the witnesses had left.

11. While an ambulance took S.S. to the emergency ward of Reykjavík City Hospital his heart stopped beating and his breathing ceased. The heartbeat was recovered after resuscitation in the ambulance, but on arrival at the ward S.S.'s pupils were still wide and unresponsive to light. The only injury noticed on first examination was a small haematoma at the back of the neck. A tomograph examination however revealed an extensive sub-arachnoidal haemorrhage. Brain surgery was performed immediately, but the attempts to save his life were unsuccessful. S.S. died the following day.

12. An autopsy carried out on 15 May 1997 concluded that an extensive cerebral haemorrhage had been the cause of death. Moreover, according to

the autopsy report, from a bruise on the hairy scalp in the neck region and a haematoma under the scalp, it could be deduced that an impact (i.e. a blow, a kick or a fall) causing a sharp movement to the brain could have resulted in a tear of an artery and the resultant haemorrhage. No evidence had been found to the effect that the haemorrhage could have been caused by disease. S.S. had been heavily under the influence of alcohol at the time he received the injury to his head.

13. On becoming aware the day after the incident that S.S. had been taken to hospital and was in a poor state, the applicant reported to the National Bureau of Investigation. During questioning he admitted to having had a scuffle with the deceased but he denied having kicked him in the head. A forensic examination was carried out on the applicant's shoes a few days after the event but no evidence was found to substantiate such an allegation.

14. On 15 July 1997 S.T.E. was indicted with having attacked S.S., and for having dealt him a heavy blow to the back of the head causing him to fall unconscious to the floor. The applicant was charged with having subsequently kicked S.S. in the head once as the latter lay on the floor, causing a massive cerebral haemorrhage leading to S.S.'s death. The charges were made under Article 218 of the Penal Code (No. 19/1940), as amended by Article 11 (Act 20/1981).

15. In the proceedings before it, the District Court of Reykjavík heard both defendants and 20 witnesses. The witness accounts relating to the incident diverged greatly and some of the witnesses changed the version they had previously given to the police.

16. By judgment of 19 September 1997, the District Court convicted and sentenced S.T.E. to 2 years' imprisonment and acquitted the applicant on the ground of lack of evidence. Its reasoning included the following observations:

“The accounts of the fight at the Vegas club diverge greatly but it has been established that it was of short duration and that it involved not only the defendants and the late S.S. but also others The premises were rather badly lit with coloured and blinking lights. It is also to be borne in mind that many of the witnesses who have testified in this case were under the influence of alcohol, some of them heavily. It is also established that the deceased was heavily intoxicated.

The applicant has firmly denied having kicked S.S. in the head. S.T.E. has stated that, as S.S. was on all fours trying to stand up, the [applicant] had kicked him distinctly in the neck with the tip of his shoe. [S.T.E.'s] account is not consistent with any other statement and must be rejected. A witness has testified that [the applicant] kicked with the tip of his shoe on the back of the deceased's head as he lay on his side. Others have not ascribed such conduct to the [applicant] and the examination of his shoes fails to provide support for this testimony. Nor is [S.T.E.'s] statement ... supported by the nature of the injury on the deceased's neck and what has been found as regards the type of shoes the [applicant] was wearing. Bearing this in mind, and having regard to the [applicant's] firm denial, it has not been established that he kicked the deceased's head. He is therefore to be acquitted.

The defendant S.T.E. has also firmly denied having struck the late S.S. On the other hand V.R.T. has stated that a big, thickset man in his thirties, wearing a ... striped or brightly patterned ... garment, dealt a man in a blue shirt a blow behind his right ear, so that he fell forward. S.L. has stated that he saw S.T.E. strike S.S. high on his head. O.R.J. has stated that he saw a man ... strike the deceased on the head, at the rear or on the side. B.P. has described how a man in a light coloured shirt and jeans struck another man to the side of his eye with an audible impact and has stated that the man fell on the floor, again with an audible impact. Despite the fact that their testimonies are inconsistent, they all agree that the man stricken did not stand up again. The District Court finds it established that ...the defendant S.T.E. dealt the late S.S. one blow to his head in the course of the fight, so that he fell on the floor and lay there unconscious. Nothing can be determined as to whether the cerebral haemorrhage was a result of the blow or the fall or both, but the defendant is criminally liable for these tragic consequences. He is therefore guilty of a violation of Article 218 (2) of the Penal Code.”

17. On 23 September 1997 the Public Prosecutor appealed against the applicant's acquittal to the Supreme Court and requested his conviction of the charges in the indictment and a sentence, as well as a heavier sentence for S.T.E. The Prosecutor further stated: “[The defendants were] therefore summoned to appear before the Supreme Court when the case will be tried there, to hear the charges, to respond on their behalf and to accept judgment. They may not expect to be served any further notification or summons.”

In his supplementary observations of 30 April 1998, the Prosecutor reiterated the District Court's finding that the co-defendant S.T.E. had dealt the victim S.S. one blow in his head in the course of the fight so that he fell on to the floor and lay there unconscious, and that nothing could be determined as to whether the cerebral haemorrhage was the result of the blow or the fall or both. He pointed out that defendant S.T.E. had stated that the applicant had kicked S.S. in the head when he was trying to stand up and that witness E.P. had definitely stated that the applicant had kicked the back of S.S.' head as he lay on the floor. Their statements related to the same kicking of S.S.'s head. The discrepancy in their statements could not justify rejecting S.T.E's statement on this point. The grave and sustained physical assault by both defendants led to the haemorrhage and the victim's sudden death.

18. In a writ of 5 May 1998, the applicant's defence counsel replied that it could not be seen from the Prosecutor General's submissions that he considered that the District Court had incorrectly assessed the evidence, as he did not request the Supreme Court to quash the lower court's judgment and remit the case to the latter. Counsel for the defence further made detailed arguments against those made by the Prosecutor General on the witness evidence, stressing that the evidence of the co-defendant S.T.E. was unreliable as he obviously had a personal interest in the applicant being found guilty of the charges.

19. After having heard the prosecution and counsel for the applicant, but not the applicant himself or any witnesses, the Supreme Court, by judgment

of 22 May 1998, convicted the applicant of the initial charge and sentenced him to 2 years and 3 months' imprisonment. Moreover, it upheld the District Court's sentence of S.T.E. The Supreme Court's case-file included transcripts of the oral evidence before the District Court and all documents submitted in the proceedings before the latter, such as police reports concerning the incident at the Vegas club, statements of witnesses provided to the police at the investigation stage, autopsy reports and other results from the medical examination of the deceased, as well as a medical report on the applicant, and photographs of the applicant, his co-defendant and the other five persons who were involved in the fight and who later became witnesses in the case. It also included photographs of the shoes which the applicant was wearing that night and photographs and drawings of the premises where the fight took place at the Vegas club. There were, moreover, several other documents, such as the applicant's criminal record.

20. The Supreme Court held:

“... the District Court's finding that the deceased died from a sub-arachnoidal haemorrhage resulting from an impact or impacts on the head is upheld. The only external injuries observed on his head were a bruise on the hairy scalp on the neck and a haematoma under the scalp. The injury was not shown to have been caused by a heavy impact or impacts on the neck and it has been sufficiently determined that a relatively light impact could cause such injury. The fact that the deceased was heavily intoxicated is also of significance.

Despite the fact that the [witness] statements ... are somewhat lacking in clarity, the Supreme Court does not find it imprudent to conclude that both defendants, together with S.L., assaulted the deceased. The latter witness stated to the police, and in fact confirmed in court, that defendant S.T.E. struck the man on his head. This is supported by the statements of witnesses U.R.T. and O.R.J. and also by S.T.E.'s own statement that he struck one fellow. However, it must be borne in mind that E. traces an injury to the applicant, and E.P. traces an injury to S.L. Accordingly, the Supreme Court finds it proven that S.T.E. dealt S.S. a blow on his head, with the result that he fell onto the floor. In witness E.P.'s statement, which to a certain extent is supported by doorkeeper G.Ó's statement and the initial statements of those who were present at the scene to the effect that the deceased was kicked in the head, it has also been sufficiently established that the applicant subsequently kicked S.S. in the head while he was lying on the floor.

In view of all the above evidence it has been proven that both defendants attacked the deceased, who was so much under the influence of alcohol that he was unable to fight or to protect himself from falling. No other person can be considered to have inflicted on S.S. the injury that led to his death. The defendants ought to have been aware that their assault could result in serious injury. Considering the act and its consequences which are to be regarded as unintentional, both defendant's conduct is deemed to violate Article 218 (2) of the Penal Code According to the autopsy report and the statement of the doctor performing the autopsy ... the consequences of the assault were more serious than what was to be expected. This must be taken into account in sentencing.”

The minority (of one judge) stated:

“The witnesses' statements relating to the events at the Vegas club on 13 May 1997 ... are described in the majority opinion and in the District Court's judgment. The description includes the part played by the defendant S.T.E., who denied the charges. In spite of his denial, I find it established that, with his fist, he dealt [S.S.] ... a blow on the back of the latter's head causing him to fall onto the floor where he subsequently lay motionless. An injury was found on the upper part of the neck. I consider that a judgement shall be rendered on the basis that this act perpetrated by defendant S.T.E. led to [S.S.'s] death. ... I concur with the other judges that the penalty of this defendant shall be 2 years' imprisonment.

The [applicant] also denied the charges. One witness firmly stated that he saw this defendant kick the deceased in the head as he lay in the floor. Another witness, a doorkeeper at the Vegas club, testified that he had seen someone kick the man as he lay on the floor. To him this seemed a kick, but he could not state who kicked, nor where the kick hit the body. The witness did not mention this when making his statement to the police on 14 May 1997. When questioned again by the police 2 days later, the witness was quoted as saying: 'This was a fight where he saw hands beating and feet kicking, but he could not determine who beat whom or whether somebody kicked somebody'. Considering the case as a whole, the charges are not borne out by this witness statement. I find that the prosecution has failed to establish the [applicant's] guilt and that his acquittal by the District Court is therefore to be upheld.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. Article 157 (1) and (3) of the 1991 Code of Criminal Procedure (as amended by Act No. 37/1994) reads as follows:

“1. Supreme Court cases shall generally be presented orally during the final hearing. The Court may however decide that the final presentation of a case shall take place in writing, if there are particular reasons making this commendable. The Supreme Court may also receive a case for adjudication without a final presentation if both parties request this or if the appeal only concerns a revision of the sanctions ordered. ...

3. The Supreme Court may decide, to the extent necessary, to receive in court statements given orally in evidence, if the Court deems, in the light of the facts, that the evidence in question may affect the outcome of the case.”

22. Article 159 provides:

“1. The Supreme Court cannot order a heavier penalty or other sanctions unless the prosecution authority has, for that purpose, appealed against a judgment.

2. If an appeal has been lodged against a judgment by the prosecution authority but not by the defendant, the Supreme Court may nevertheless change the judgment for the benefit of the defendant.

3. In the case of an appeal on the merits of a judgment, the Supreme Court shall not change the sanctions ordered except if they exceed the limits provided for in the relevant criminal provisions or if they are disproportionate to the offence committed by the defendant.

4. The Supreme Court cannot revise a district court's conclusion concerning the evidential value of oral statements, except if the witness in question, or the defendant, has made a statement before the Supreme Court.

5. If the Supreme Court considers it likely that the conclusion of a district court concerning the evidential value of oral statements in court may be incorrect so as to materially affect the outcome of the case, and the witnesses in question or the defendant have not provided oral statements before the Supreme Court, the Supreme Court may invalidate the judgment of the district court and the district court procedure to the extent necessary to enable oral evidence to be received by the district court as needed, and a new judgment to be rendered.”

The Government submitted that, according to legal practice, the meaning of the expression “evidential value of oral statements” in Article 159 (4) is twofold. Firstly, it refers to the assessment of the credibility of a witness and his or her statements considered on its own. For this purpose it is necessary that the witness appear in court and be questioned by the judge directly. Secondly, the provision in Article 159 (4) refers to the weight of his or her testimony as compared with that of other evidence in the case, where the Supreme Court has accepted the District Court's assessment of the witness' credibility. The main purpose of the provision is to guarantee that the Supreme Court will not reassess the credibility of a witness who has given oral evidence to the District Court. According to the Government, this interpretation finds support in the explanatory report accompanying the bill for the Act No. 37/1994 amending the provisions regarding proceedings before the Supreme Court. If the latter considers that the District Court has assessed the credibility of the witness statements wrongly, it would quash the first instance judgment and, in so far as necessary, order the District Court to take new oral evidence and give a new judgment. An example of the Supreme Court having taken evidence under Article 159 (4) could be found in Supreme Court case no. 11/2001, adjudicated on 21 February 2002, where the Supreme Court, after having already once quashed the District Court's assessment of the matter, found it necessary in a second round to appraise itself of the credibility of the accused's defence.

THE LAW

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

23. The applicant alleged that he had been the victim of a violation of Article 6 § 1 of the Convention which, in so far as is relevant, reads:

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

24. The Government disputed the above contention and requested the Court to find no violation of the Convention in the present case.

A. The parties' submissions

1. Applicant's submissions

25. In the applicant's submission, when convicting and sentencing him – and in doing so overturning his acquittal by the District Court – the Supreme Court had based itself on a reassessment of the oral evidence given before the District Court, without having heard either the witnesses or the accused himself. This was not only contrary to Icelandic law but also violated Article 6 § 1 of the Convention.

Contrary to what was suggested by the Government, the applicant had not tacitly waived any of his procedural rights before the Supreme Court. The prosecution request that he be convicted on the charges set out in the indictment and his defence counsel's written submissions made in reply to those of the prosecution, gave the Supreme Court every reason to hear the accused and witnesses before overturning the first instance acquittal.

Since the facts pertaining to the question of criminal liability were disputed, the applicant considered that he had an even stronger case under Article 6 § 1 of the Convention than the applicant in *Botten v. Norway* (judgment of 19 February 1996, *Reports of Judgments and Decisions*, 1996-I, § 49). Under Article 159 (4) of the Code of Criminal Procedure, the Icelandic Supreme Court had a duty to summon him and the witnesses, and to hear evidence from them directly before passing judgment. The applicant disagreed with the Government's view that it was relevant whether the taking of oral evidence of the same witnesses would have brought new information to the case.

2. Government's submissions

26. The Government maintained that, while the issue of fairness under Article 6 § 1 ought to be considered in the light of the entirety of the proceedings, there was nothing to indicate that those before the District Court were in any way unfair. Furthermore, the Supreme Court proceedings included a public and oral hearing at which both parties, the prosecutor and counsel for the defence, were allowed to speak twice. In accordance with its consistent practice, the Supreme Court relied on the District Court's transcripts, which included the full testimony of both defendants and all the witnesses, and had been prepared on the basis of the tape recordings of the hearing. In this respect the present case differed clearly from that of the above-mentioned *Botten v. Norway* invoked by the applicant. In addition,

the Supreme Court's case-file included all the other evidence submitted in the District Court proceedings.

27. The Government further stressed that had the Supreme Court found it necessary to take oral evidence, it would have been required under Article 157 (3) of the Penal Code to do so. However, the applicant did not avail himself of the possibility under Icelandic law to request the Supreme Court to hear witnesses. Nor did he use the possibility of being present at the public hearing in his case, during which it would have been possible for him to address that court. The matter of which he complains under the Convention was never put to the Supreme Court, either in substance or by express reference to Article 6 § 1 of the Convention. The applicant's counsel had tacitly accepted on his behalf that there was no reason for the applicant or the witnesses to give oral testimony to the Supreme Court.

28. The Government found it difficult to envisage that a fresh hearing of the same witnesses before the Supreme Court would have cast any new light on or provided new information about the incident. Had the Supreme Court considered this necessary, it would have quashed the District Court procedure and judgment and ordered the taking of new oral evidence. However, the credibility of the witness statements before the District Court hearing was a matter which the Supreme Court could properly assess on the basis of the transcripts of the lower court's hearing. It was anyway for the applicant to demonstrate in what way the taking of oral evidence from him and the witnesses by the Supreme Court could have led the latter to reach a different conclusion.

Although the Supreme Court could not alter the District Court's assessment of the credibility of a witness statement on a factual point without hearing the witness itself, it could review the lower court's assessment of the evidence in other respects, and determine whether the burden of proof had been fulfilled to the extent necessary for a conviction. The Supreme Court did not question the credibility of the witnesses concerned but considered that the oral evidence given by witness E.P., which was to a certain extent supported by that of the doorkeeper G.Ó., sufficiently established that the applicant had kicked the deceased S.S. in the head when he was lying on the floor. It also had regard to the initial statements in police reports of those who were present at the scene.

The Supreme Court's conviction of the applicant was clearly based on its finding that the oral evidence before the District Court was sufficient to prove that he had kicked the deceased in the head. The applicant had not shown that the appearance of the aforementioned witnesses before the Supreme Court would, or was likely to, have lead to a different outcome. The fact that the Supreme Court overturned the acquittal by the District Court without hearing the applicant in person or the witnesses concerned did not, of itself, infringe the fair hearing guarantee in Article 6 § 1 of the Convention.

B. The Court's assessment

1. Principles in the Court's case-law

29. The Court notes from the outset that the applicant complained, with reference to the general right to a fair and public hearing in Article 6 § 1 of the Convention, that the Supreme Court did not hear either the defendant 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 the witness complaint under Article 6 § 3 (d) of its own motion, as it does not concern the right to hear witnesses “on the same conditions” as the prosecution (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, § 91) but, rather, like the first complaint, the scope of the general right to a “fair and public hearing” in Article 6 § 1. The Court considers that both complaints may suitably be dealt with under that provision.

30. The Court reiterates that the manner of application of Article 6 § 1 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Where a public hearing has been held at first instance, the absence of such a hearing may be justified at the appeal stage by the special features of the proceedings at issue, having regard to the nature of the domestic appeal system, the scope of the appellate court's powers and to the manner in which the applicant's interests were actually presented and protected before the court of appeal, particularly in the light of the nature of the issues to be decided by it (see the above mentioned *Botten* judgment, § 39).

According to the Court's case-law, 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 of being heard in person by the appeal or cassation court. Moreover, even if the court of appeal has full jurisdiction to examine both points of law and of fact, Article 6 § 1 does not always require a right to a public hearing or, if a hearing takes place, a right to be present in person (*ibidem*).

2. Application of those principles to the present case

31. The Court observes that the District Court proceedings comprised a full hearing during which counsel for the defence, the applicant in person and over twenty witnesses were heard, and that the fairness of those proceedings is undisputed. An oral hearing was also held by the Supreme Court, which heard counsel for the defence and the public prosecutor twice. Its case-file comprised transcripts of the oral proceedings before the District

Court and all the documents submitted in the proceedings before the latter. The issue to be determined is whether the Supreme Court's omission to take oral statements from the applicant and witnesses before overturning his acquittal by the District Court, convicting him of the initial charge and sentencing him to 2 years and 3 months' imprisonment, was incompatible with the applicant's right to a fair and public hearing under Article 6 § 1 of the Convention.

32. In this connection, it should be observed that the fact that the Supreme Court was empowered to overturn an acquittal by the District Court without summoning the defendant and witnesses and without hearing them in person did not of its own infringe the fair hearing guarantee in Article 6 § 1. It must be considered, however, whether, in the light of the Supreme Court's role and the nature of the issues to be decided by that court, there has been a violation in the particular circumstances of the case. That examination will not address whether the Icelandic Supreme Court correctly assessed the factual and legal issues before it but will be confined to whether the proceedings were fair (see the above-mentioned *Botten* judgment, § 48).

33. In this respect the Court notes that the Supreme Court had full jurisdiction to examine not only questions of law but also questions of fact pertaining both to criminal liability and to sentencing.

The prosecution appeal to the Supreme Court requested that the applicant be convicted of the charges set out in the indictment and sentenced accordingly, thus disputing the District Court's assessment of certain discrepancies between the statements made by the defendant S.T.E. and the witness E.P. regarding the kick to the head of the deceased victim.

34. Consequently the Court observes that, apparently, the issues to be determined by the Icelandic Supreme Court in deciding on the applicant's criminal liability were predominantly factual in nature. It can hardly be argued that those questions were straightforward. This seems to have been recognised even by the majority of the Icelandic Supreme Court, which in its judgment noted that the witness evidence was lacking in clarity. Bearing in mind the nature and the particular circumstances of the criminal act, the large number of witnesses heard at first instance, the contradictions and inconsistencies in their accounts, the forensic examination and the differences in the national courts' assessment of the facts, it can be assumed that the factual issues to be determined by the Supreme Court were complex.

35. Moreover, in deciding on sentence, the Supreme Court did not have the benefit of the prior assessment of the question by the lower court which had heard the applicant directly.

36. Having regard to what was at stake for the applicant, the Court does not consider that the issues to be determined by the Supreme Court when convicting and sentencing him - and, in doing so, overturning his acquittal

by the District Court - could, as matter of fair trial properly have been examined without a direct assessment of the evidence given by the applicant in person and by certain witnesses.

In this regard, the Court is not persuaded by the Government's argument that, unlike its Norwegian counter-part in the *Botten* case, the Icelandic Supreme Court had the benefit of having the transcripts of the oral hearing at first instance. That was not a factor relied on by the Court in the *Botten* case which, rather, placed emphasis on "the Supreme Court's role and the nature of the issues to be decided".

37. Finally, the Court considers, in the light of the wording of Article 159 (4) of the Code of Criminal Procedure, that the applicant could reasonably have expected the Supreme Court to summon him and other witnesses to give oral evidence should it be minded to overturn the District Court's acquittal on the basis of a different assessment of the evidence. The judicial practice invoked by the Government, to the effect that the Supreme Court would only do so before reaching a contrary finding to that of the District Court as to a witness' credibility, related only to a single example which in fact post-dated the events of the present case and could not be relied upon by the applicant.

38. Having regard to the entirety of the proceedings before the Icelandic courts, to the role of the Supreme Court 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 certain witnesses, and hear evidence from them directly, before passing judgment under Article 159 of the Code of Criminal Procedure. The Supreme Court was under a 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 by the Supreme Court (see the above-mentioned *Botten* judgment, § 53).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed ISK 29,622,338 (approximately 352,000 euros) in compensation for non-pecuniary damage with respect to the 571 days he had spent in detention. His claim was based on two “precedents”, namely an award made by the Icelandic Supreme Court on 3 March 1983 in a case of unlawful detention and the friendly settlement reached in *Vilborg Yrsa Sigurðardóttir v. Iceland* (judgment of 30 May 2000, no. 32451/96, unpublished).

41. The Government disputed this claim and requested the Court to reject it. In the Government's opinion, the finding of a violation would constitute adequate just satisfaction in the present case.

42. The Court does not consider the practice invoked by the applicant relevant and cannot speculate as to what the outcome of the proceedings before the Supreme Court would have been if the latter had taken oral evidence from the applicant and certain witnesses. However, having regard to the nature of the shortcomings which occurred and the seriousness of what was at stake for the applicant in those proceedings, the Court is satisfied that he suffered anguish and distress that cannot be sufficiently compensated for by the finding of a violation of the Convention. Deciding on an equitable basis, it awards the applicant 8,000 Euros (EUR) under this head.

B. Costs and expenses

43. The applicant further sought the reimbursement of legal costs and expenses with respect to the following items:

- (a) ISK 155,625 (approximately 1,800 Euros) for translation costs;
- (b) ISK 2,370,480 (inclusive of 24% of Value Added Tax, approximately 28,000 Euros) for his lawyer's work (137½ hours at ISK 14,000 per hour, without VAT) in the Strasbourg proceedings. To this should be added 4½ hours spent at the final stage of the proceedings.

44. The Government had no objection to item (a), subject to the production of vouchers by the applicant. Item (b), however, was excessive in their view.

45. The Court is satisfied that item (a) should be granted in its entirety. As to item (b) it is not convinced that all the costs were necessarily incurred in order to obtain redress for the violation found of the Convention. Making an assessment on an equitable basis, it awards the applicant the total sum of EUR 13,500 for his costs and expenses.

C. Default interest

46. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;

(ii) EUR 13,500 (thirteen thousand five hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President