



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

THIRD SECTION

CASE OF SÚSANNA RÓS WESTLUND v. ICELAND

(Application no. 42628/04)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

07/07/2008

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 Súsanna Rós Westlund v. Iceland,

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

Mr M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 15 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 42628/04) 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, Mrs Súsanna Rós Westlund (“the applicant”), on 19 November 2004.

2. The applicant was represented by Mr Valgeir Kristinsson, a lawyer practising in Kópavogur. The Icelandic Government (“the Government”) were represented by their Agent, Mr Thorsteinn Geirsson, of the Ministry of Justice and Ecclesiastical Affairs.

3. The applicant complained that, in breach of Article 6 § 1 of the Convention, the Supreme Court had denied her the possibility to plead her appeal case in writing and orally at a public hearing.

4. On 27 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mrs Súsanna Rós Westlund, was born in 1964 and lives in Hafnarfjörður.

6. The present case has its background in a real estate sale by the applicant to Mr G. in 1999, relating to a property at Grenimelur 36 in Reykjavik. The relevant sales agreement of 27 August 1999 referred to a summary report describing the property, which included the following statement: “The house has recently been renovated on the outside, except for windows and glass. New roof tiles. Garage renovated windows partly. Wooden parquet flooring in need of repair. Great location in the west part of Reykjavik. Leakage in cellar has not been remedied. Seller will have that done.”

7. In March 2000 G. complained to the real estate agent that he had discovered a leak from the roof of the house and that the repair which had previously been done to the roof had covered only parts of it. Many new or newly discovered flaws on the property could be traced back to the leak in the roof. Moreover, G. claimed compensation from the applicant.

8. Following a report issued on 26 September 2001 by a court appointed expert, G. brought compensation proceedings before the Reykjavik District Court, claiming a discount on the purchase amount due to defects as well as compensation for the damage to the property.

9. After holding an oral hearing, at which the applicant was represented by a lawyer and both parties were heard and evidence was presented, including a report by a court appointed expert, the District Court, sitting with one professional judge and two expert judges, by a judgment of 16 April 2003, found in favour of G. and against the applicant. It ordered the applicant to pay G. 1,739,000 Icelandic krónur (ISK), plus default interest as from 26 September 2001, and ISK 600,000 for legal costs (value added tax included).

The District Court’s judgment included, inter alia, the following reasons:

“The plaintiff [G.] received the property in the summer of 1999. The plaintiff noticed a leak in the house in the beginning of the year 2000, after a winter with bad weather. The engineers report verified that there had been a leak on the roof. In accordance with the summary report for the sale of the house, where the property is described in writing, which also was available at the signing of the contract for sale, it is stated that there are new roof tiles on the roof. As has been verified throughout this process this was not the case. Furthermore it is not the understanding of the court that the plaintiff should have seen this fault during routine inspection of the house or should have seen whether the tiles were new. It has also been stated in the engineers report that the roof leaked and has caused damages to windows and window frames. It is therefore the understanding of the court that the defendant [Súsanna Rós Westlund] guaranteed that the roof tiles were new, and that the plaintiff should have been able to trust that the roof would not leak, even if the house is an old one.

By selling the property without the proper qualities, the defendant is liable to the plaintiff in accordance with the general rule of 2. paragraph, chapter 42 of the laws then valid nr. 39/1922 regarding liquid assets.”

10. On 2 June 2003 the applicant lodged an appeal with the Supreme Court against the District Court’s judgment, challenging the latter’s

conclusions that she was liable to pay G. compensation or, in any event, claiming that the amount be reduced. G. was then given until 16 July 2003 to notify the Supreme Court of whether he intended to submit any pleadings in the case, failing which it would be presumed that he would request confirmation of the District Court's judgment and that the case would be adjudicated in accordance with Article 158 (3) of the Code of Civil Procedure (CIP), No. 91/1991.

11. Concurrently with her appeal, the applicant asked that a new expert be appointed by the District Court in order to evaluate especially the supporting surface under each tile and to evaluate the necessity of changing the supporting surface (roof cardboard) if tiles were to be changed on the roof. The District Court granted the request and appointed expert B.

12. The applicant submitted to the Supreme Court a writ of appeal dated 14 July 2003, which was deposited on 16 July 2003 together with the case-documents pursuant to Article 156(1). The writ reiterated the applicant's claims, enclosing copies of her request to the District Court to appoint an expert and to take a statement from G. for use at a hearing before the Supreme Court. It moreover outlined the facts of the case and stated the applicant's grounds for appeal. It referred to her claims, arguments and evidence submitted in the District Court proceedings. The applicant protested against the assessment made by the expert before the District Court. She maintained that G. had examined the house, including the roof, in detail before signing the acquisition offer. The offer of purchase had been issued on 6 June 1999 and G. had taken possession of the property on 25 June 1999, whereas the sales agreement had been issued on 27 August 1999. Thus, the applicant argued, when the sales agreement had been issued, G. had been in possession of the property for two months without ever mentioning that there had been a discrepancy between the retail accounts of the house and the state of the house with regard to roof tiles. It was unthinkable that G. had not known that the tiles were old at the time of the sales offer and certainly upon signature of the sales agreement. It was improbable that G., who was an active person of keen interest, would not have taken a look at the roof. The slope of the roof had been quite steep and could be seen from the side-walk. It was preposterous to claim that the wording of the retail could be stretched to mean something other than what could be seen in plain sight. This was the essence of the case.

The applicant further maintained that not until 29 August 2000 had G. raised the matter in dispute and only then had he made an issue about the specific wording of the summary report describing the property with regard to new roof tiles. His indifference in this respect should lead to his forfeiting any right that he might have claimed. This indifference was further illustrated by the fact that he alleged to have discovered a leak shortly after taking possession of the property but had made no comments during the signing of the sales agreement or the deed. The applicant announced that

she would make submissions about the confusing interpretation made by the District Court regarding the wording of the summary report describing the property and the alleged flaw on the roof. She would submit new documents to the Supreme Court when they were ready, notably a new assessment by a court appointed expert.

In addition, the applicant requested the Supreme Court to take witness evidence from persons who had provided repair and restoration services to G. in order to enlighten the Supreme Court on whether they had noticed that G. himself had inspected and examined the roof during the summer of 1999.

Finally the applicant stated that the case would be further presented and commented on in the course of an oral hearing.

13. As at 16 July 2003 G had not indicated that he would plead his case before the Supreme Court.

14. According to a letter of 3 September 2003 from the Supreme Court to the applicant's lawyer, he was given until 24 September 2003 to complete her further collection of evidence under Article 158(3). The lawyer then requested an extension with reference to the need to await the completion of the assessment by the court-appointed expert, which the Supreme Court granted until 22 October 2003. On the same ground the Supreme Court granted a further extension until 5 November 2003.

15. On the latter date the applicant's lawyer asked, by way of e-mail, for a further extension of two weeks. On the same date the Supreme Court's registrar conveyed the following message to the lawyer by e-mail:

"The possibility is still open that the respondent [G] will be allowed to present defences in the Supreme Court, although he did not make a notification to that effect. An essential requirement is a letter from the respondent to the Court, asking to be allowed to present his defences and explaining the reasons why no notification of defences was made. The letter must be accompanied by the appellant's [the applicant's] approval of this being allowed. This is assuming that judgment has not already been rendered on the basis of Article 158 (3) of Act No. 91/1991."

By return e-mail in the same day, the applicant's lawyer declared that he would forward this information to the other side. He also asked whether an extension of two weeks would be granted. There is no record of any formal reply to this request.

16. In a letter of 12 November 2003 the applicant's lawyer reiterated his request to be granted respite, until 26 November 2007, in order to present the awaited new expert appraisal. He also informed that G. had omitted to show up at a hearing and affirmed that it was now clear that G. would not make submissions. He further objected that the Supreme Court's interpretation of Articles 158 and 161 of the CCP meant that the applicant was prevented from defending her case and stressed that a short summary of facts could not replace an oral hearing.

17. On 13 November 2003 G's lawyer sent the office of the Supreme Court the following e-mail message:

“Further to our conversation yesterday, I can confirm that my client’s [G’s] desire is not to take any action on account of [the applicant’s lawyer’s] request for a reopening of the case and to have the case adjudicated in the present form, without further collection of evidence or presentation in court. His requests were, or were to be, only an affirmation of the judgment appealed from.”

18. By a letter to the Supreme Court of 14 November 2003, the applicant’s lawyer protested against its interpretation of Article 158(3). It unduly restricted her possibilities of pleading her case in writing and orally. It meant that the case file from the District Court and her appeal to the Supreme Court would constitute the only basis for the Supreme Court’s adjudication. Therefore, she asked the Supreme Court to grant her leave to at least plead her case in writing, her observations submitted so far having only been a “skeleton” version of the submissions she had intended to make to the Supreme Court. So far she had had no opportunity to elaborate on her appeal with references to case-law, scientific research or writings, explanation of the factual aspects of this case or the documentary evidence. The lawyer stressed that in so far as he was concerned the case was not ready for examination. In the circumstances it was the adversary party who had been allowed to decide the fate of the case while the applicant had practically lost standing in the case.

19. At an oral hearing held by the District Court on 26 November 2003 expert B presented his report and answered questions from the applicant’s lawyer.

20. With a letter of 30 November 2003 the applicant’s lawyer transmitted to the Supreme Court the expert B.’s appraisal, the District Court’s decision of 26 November 2003 confirming the appraisal, two photographs of the house and some other documents. According to the applicant, the new appraisal showed that the District Court had overestimated the costs of repair, should the Supreme Court find that the applicant had promised that the roof had been completely renovated with new tiles at the time of sale. The applicant further commented on the photographs of the roof from 1993 and on the front page of expert B.’s report. She invited the members of the Supreme Court to carry out an on site visit to see that the state of the roof could be seen from the side walk. She also pointed out that her request to the District Court to hear persons who had worked on the house for G during the summer of 1999 had been denied by him, which the applicant had interpreted as an attempt to conceal information about the fact that G had thoroughly checked the roof and been aware of its state during the summer of 1999.

21. On 3 June 2004 the Supreme Court, adjudicating the case on the basis of the written case-file, rejected the applicant’s appeal and upheld the District Court’s judgment. The Supreme Court held *inter alia*:

“The plaintiff appeared before the District Court and claimed that she knew there had been repairs on the roof in the year 1992 or so. She also claims that the repairs

were only that some of the oldest tiles or cracked tiles were exchanged for others and only in certain areas of the roof. When asked, the plaintiff did not remember if this had been especially discussed in detail with the defendant, when he examined the house the first time. She did however tell the defendant that the roof had been repaired and that it no longer leaked. It is the court's ruling that the plaintiff should have known that this description in the summary report for the sale of the house and the description of the current status of the roof, would give the defendant the wrong impression of the actual condition of the roof. The defendant should have reason to trust the description of the house in the summary report for the sale of the house and therefore have reason to believe the house had been renovated. Since the roof had not been fully renovated, the defendant has a right to compensation. In accordance with this and in other respects the Supreme Court of Iceland refers to the District Court ruling and proceedings and verifies the District Court ruling hereby."

In accordance with the above, the applicant paid ISK 3,607,067 (approximately 38,000 euros (EUR) to G.

II. RELEVANT DOMESTIC LAW

22. The Icelandic Government drew particular attention to the following provisions of the Code of Civil Procedure (CIP), No. 91/1991:

Article 155

"1. A party desiring to appeal against a judgment shall submit an appeal summons to the office of the Supreme Court, with a transcript of the judgment. The following shall be stated in the appeal summons:

- a. The district court's designation and number of the case, the name of the district court that resolved the case, and the date of adjudication;
- b. the names of the parties, their National Registry numbers, their places of residence or stay, and, if applicable, the names of their representatives, their positions and their places of residence or stay;
- c. the person or persons representing the appellant in court;
- d. the purpose of appeal and the requests made by the appellant;
- e. the date when the respondent must, at the latest, notify the Supreme Court that he intends to bring forth defences in the case, which date the office of the Supreme Court shall determine when the summons is issued, and
- f. the consequences of failing to provide the notification provided for in subparagraph (e).

..."

Article 156

"1. Following the service of an appeal summons, but before the respondent's period provided for in Article 155, the first paragraph, subparagraph (e), is over, the

appellant shall deliver the summons to the Supreme Court with proof of its service, and written observations on his behalf. He shall also deliver the case file in the number of copies which the Supreme Court may decide, consisting of the already available case documents and any transcripts on which the appellant plans to base his case before the Supreme Court. This marks the filing of the case by the Supreme Court.

2. In the appellant's written observations the following shall be stated:

a. The purpose of appeal and the appellant's exact requests to the Supreme Court, and whether appeal is also lodged in order to obtain a reversal of any particular order or decision of the district court.

b. The facts invoked by the appellant before the Supreme Court. Their description shall be concise and so clear as to preclude any doubt as to on what basis appeal is lodged; the appellant may however, as applicable, refer to particular case documents in this regard. If the appellant can not agree with the district court's description of other relevant facts, he shall likewise state in which manner he considers them correctly described.

c. References to the principal rules of law on which the appellant bases his case before the Supreme Court.

d. The documents submitted to the Supreme Court at that time, and the documents he deems necessary to obtain.

..."

Article 158

"1. If the respondent desires to submit written observations, he shall notify the Supreme Court to that effect within the period granted him for this purpose in the appeal summons. When the case is filed the office of the Supreme Court shall grant the respondent a period of four to six weeks to submit his written observations, at the same time sending him a copy of the case file submitted by the appellant. The appellant shall be notified of the period granted the respondent.

2. Cross-appeal shall not make the respondent entitled to any additional period.

3. If the Supreme Court does not receive any notification in accordance with the first paragraph, or if the respondent does not submit his written observations within the period granted him, he shall be assumed to request affirmation of the district court's judgment. The case shall then be received for adjudication; the appellant may however be granted a brief period to complete the collection of evidence he may have announced in his written observations. The Supreme Court shall render a judgment in the case on the basis of the submissions made, without an oral hearing.

4. If the respondent delivered written observations, but appearance was not made on his behalf at a later stage, the appellant may be granted an opportunity to reply to his defences in a written brief, and to complete his collection of evidence. The case shall then be received for adjudication and a judgment rendered on the basis of the requests

and submissions made and the appellant's brief, taking the respondent's submissions into account.

5. If the respondent has not delivered written observations, the Supreme Court may nevertheless permit him to present his defences in the case, with or without the appellant's approval, provided important interests are at stake for him and his negligence is deemed excusable. This may also be done if the respondent fails to make an appearance at a later stage of the procedure.

..."

Article 161

"1. When collection of evidence has been completed in a case where the respondent has delivered written observations, the Supreme Court shall decide the time of an oral hearing and make this known to the parties at a suitable notice.

...

3. A case in which the respondent has submitted written observations shall be heard orally. The Supreme Court may nevertheless decide that a case shall be presented in writing if particular reasons recommend this. The Court may also grant the parties' unanimous request for adjudication without particular case presentation.

..."

Article 162

"1. Before an oral hearing takes place during a court session, the conclusion of the district court shall be stated and the appeal summons described to the extent the President of the Court deems necessary for explanation of the case presentation. The parties shall subsequently deliver their speeches.

2. The appellant shall speak first and the respondent subsequently, if the President has not decided on a different order and notified this to the parties when called to appear for oral presentation. Following the original speeches, the parties shall be granted an opportunity to present brief replies in the same order. The President of the Court may permit a party represented by a representative in litigation to present his brief observations following the representative's replies.

3. In their speeches, the parties shall explain their requests, the matters in dispute, the facts invoked, and any other arguments in support of the requests made. Wordiness shall be avoided and the argumentation shall be directed to the points in dispute or to matters that must be considered in order to clarify the issues.

4. The President of the Court shall chair the proceedings. The President may demand that a speaker does not stray from the substance of the litigation and that consideration is not given matters that are not in dispute or that otherwise do not merit further explanation. The President may halt the case presentation if a speech is of excessively long duration, or specify a time limit, and halt the case presentation when that limit is reached.

5. Following the case presentation the Supreme Court shall receive the case for adjudication.”

THE LAW

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

23. The applicant complains that by having denied her, despite the great interests at stake for her, the possibility to plead her case, in writing or orally, the Supreme Court had violated Article 6 § 1 of the Convention. In so far as relevant this provision reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

24. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Submissions of the parties

(i) The applicant

26. In so far as the written proceedings were concerned the applicant submitted that the Supreme Court had not granted her any extension beyond 5 November 2003, despite the fact that the new appraisal made at her request by the court-appointed expert G. had only become available on 26 November 2003. While it appeared that the Supreme Court, nonetheless, had admitted for filing her observations of 30 November 2000 joining the new expert report, and commenting on it, together with other documents, it was unclear to what extent the Supreme Court had examined the documents submitted on that date. Moreover, as was clearly stated in her observations of 30 November 2003, these were by no means her final observations but only an outline of the principal facts of the case and disputing the previous appraisal on which the District Court had based its decision. She had further

invited the members of the Supreme Court to do an on site visit to see that it was clearly visible from the side walk if the tiles were old or new.

27. In so far as the absence of an oral hearing was concerned, the applicant maintained that her intention, which ought to have been clear to the Supreme Court from her lawyer's observations of 30 November 2003, had been to obtain witness statements from persons who had worked on repairs and improvements on the house in the summer of 1999. The purpose would have been to enlighten the Supreme Court about the fact that the purchaser had indeed known about the condition of the house upon purchasing it as he had inspected the roof himself. Besides, merely by looking at the roof from the sidewalk anyone could have seen that it was the original roof of the house, built 55 years ago, not a new roof. Such matters had been of great legal importance due to the 12 months time-limit for reclamation under the relevant national law. However, before the District Court the plaintiff had denied the applicant the possibility to summon the persons who had worked on the house as witnesses by refusing to disclose their names. In the applicant's view, his behaviour revealed an attempt to conceal information about the fact that he as the purchaser had thoroughly checked and been aware of the conditions of the roof in the summer of 1999. This point would have been one of the main items for her oral pleadings before the Supreme Court had the latter granted her request to hold an oral hearing. However, the argument had not been made out in the appeal, due to constraints imposed by the Supreme Court, by virtue of its restrictive practice with regard to written appeal submissions generally, and its conduct of the proceedings in this case. Her written observations had simply consisted of outlines of the main facts of the case. Thus she had not adduced references to national case-law, other expert opinions in the relevant field, further evidence, arguments or exhibits of relevant facts. Nor had she submitted any claims that the buyer had seen and approved of the house in its state at the material time or that he had thereby forfeited his rights.

(ii) The Government

28. The Government disputed the applicant's allegations, arguing that all elements of a fair trial by an independent and impartial tribunal as required by Article 6 § 1 of the Convention had been preserved in the relevant proceedings before the Icelandic courts. The Government stressed that applicant's case had been argued orally at a public hearing in the District Court where the parties had enjoyed equal status in every respect and unlimited and equal access to the evidence adduced and the same possibilities to call witnesses. In the proceedings before the Supreme Court the defendant had waived his right to respond to the applicant's appeal with written pleadings and additional evidence. As a consequence, under the relevant statutory rules on civil procedure, he was then assumed to adhere to

the requests he had made to the District Court. This had not, however, entailed any restriction on the applicant's right to submit her requests and new evidence to the Supreme Court. The statutory arrangement that her case would not be orally argued before the Supreme Court under these circumstances had been based on reasonable and justifiable grounds relating to the changed nature of the proceedings when the adversary party opted not to respond appellant's submissions.

29. The Government further stressed that written proceedings before the Supreme Court had been intended to allow the parties to plead their case but not submit new claims, legal arguments or evidence that had not been previously submitted to the District Court.

30. The rules governing the procedure in cases where the respondent to the appeal did not take part in the appeal proceedings had by no means hindered the applicant in submitting new written evidence to the Supreme Court and she had indeed availed herself of this right. The Supreme Court had granted her no less than three extensions of the time-limit for obtaining a new appraisal, totalling more than two months in excess of the original period granted. With a letter dated 30 November 2003, the applicant's lawyer had submitted a new appraisal and other evidence to the Supreme Court, accompanied by particular observations containing his arguments and stating inferences that could be drawn from the new submissions. It was clear that both the new evidence and her arguments were carefully evaluated by the Supreme Court in its judgment of 3 June 2004.

31. The Government further emphasised in this context that no questions of fact or of law had been raised that could not be adequately resolved on the basis of the case file, which comprised the case-file of the District Court and the applicant's additional written observations and evidence submitted to the Supreme Court.

32. When considering the applicant's complaint that her case had not been afforded an oral hearing and the consequences thereof, the Government stressed that the purpose of oral argument before the Supreme Court would have been to serve the interests of adversarial proceedings, to enable an appellant to bring forth oral replies and arguments to the respondent's written observations and additional evidence. Since the respondent had elected not to defend his case on appeal, the premises for hearing oral argument from the applicant and her lawyer were lacking.

2. The Court's assessment

33. The Court reiterates that the admissibility of evidence is governed primarily by the rules of domestic law, and that it is normally for the national courts to assess the evidence before them. The task of the European Court under the Convention is to ascertain whether the proceedings in issue, considered as a whole, including the way in which the evidence was submitted, were fair as required by Article 6 § 1 (see *Schuler-Zgraggen*

v. Switzerland, judgment of 24 June 1993, Series A no. 263, p. 21, § 66). It points out that one of the requirements of a “fair hearing” is “equality of arms”, which implies that each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his or her opponent (*Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 22, § 56; *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 38). A further element of a fair hearing within the meaning of Article 6 § 1 is the right to adversarial proceedings; each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court’s decision (see, *Mantovanelli v. France*, judgment of 18 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 436, § 33). Moreover, the procedure must be such as to allow the proper participation of the parties to the proceedings (*Kerojärvi v. Finland*, judgment of 19 July 1995, Series A no. 322, p. 16, § 42).

34. Moreover, the Court reiterates that, where, as in this case, a public hearing has been held at first instance, the absence of such a hearing at the appellate level may be justified by the special features of the proceedings at issue. Thus, 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, although the appellant was not given an opportunity of being heard in person by the appeal or cassation court. Regard must be had to the nature of the national appeal system, to the scope of the appellate court’s powers and to the manner in which the applicant’s interests are actually presented and protected in the appeal, particularly in the light of the nature of the issues to be decided by it, and whether these raise any questions of fact or questions of law which cannot be adequately resolved on the basis of the case-file (see for instance *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36; *Miller v. Sweden*, no. 55853/00, § 30, 8 February 2005).

35. In the present case the District Court, sitting with one professional judge and two expert judges, had held an adversarial hearing at which the applicant had been represented by a lawyer and at which both parties had been heard and evidence had been presented, including an assessment prepared by a court-appointed expert. Save for one exception, the applicant did not dispute the fairness of the proceedings before the District Court.

36. The exception relates to the applicant’s alleged inability to question as witnesses before the District Court persons who had worked for G. during the summer of 1999 and who the applicant considered could have enlightened the District Court about the extent to which G. ought to have been aware of the state of the roof at the time of the sale of the house. In her appeal submissions to the Supreme Court of 14 July 2003 the applicant,

without making a specific complaint about the District Court procedure in this respect, asked the Supreme Court to hear such witnesses. Not until her observations of 30 November 2003, after the expiry on 16 July 2003 of the time-limit for specifying the grounds of appeal, did she point out that the lack of opportunity to have such witnesses heard at the District Court constituted a defect in the hearing of the case at first instance. The Court will not examine this as a separate matter under Article 6 of the Convention but will take it into account as a factor in its overall assessment of the fairness of the proceedings seen as a whole.

37. As regards the disputed limitations on the applicant's possibilities to plead her case in writing before the Supreme Court, the Court notes that, pursuant to Article 156 (1) and 155(1)(e) of the CIP, she had full opportunity to do so until the expiry of the time-limit fixed for G.'s notification of his intention to plead his case before the Supreme Court, namely on 16 July 2003. Thereafter, in the absence of any notification pursuant to Article 158(3), the Supreme Court was to presume that G. would request it to confirm the District Court's judgment and the applicant was then to be granted a brief period within which to complete the collection of evidence that she had announced in her written observations. The applicant was granted leave to submit the new assessment to be provided by the court-appointed expert and the time-limit fixed by the Supreme Court for this purpose was extended several times in order to allow the completion of the expert report and the District Court's confirmation of the report. However, it does not appear from the relevant statutory rules or from the Supreme Court's procedural decisions that the applicant was entitled or granted leave to submit additional observations on the case in light of this new evidence. Nor had she, despite repeated requests by her lawyer, been formally granted an extension for filing the report beyond 5 November 2003, whereas the report only became available for filing on 26 November 2003. In the Court's view, these factors may be taken to indicate that the applicant was not in position to plead her case properly before the Supreme Court.

38. Nevertheless, the Court cannot but note that the applicant's lawyer did submit the report with her supplementary observations of 30 November 2003 commenting on the report and on other matters. This material the Supreme Court accepted to join to the case-file and took into account in its decision.

39. Against this background, the Court is not convinced that G.'s non-participation in the proceedings before the Supreme Court had the effect of preventing her from submitting her written pleadings or placed her in a less favourable position than the adversary party at the written stage of the proceedings.

40. On the other hand, more problematic is that, in accordance with the relevant provisions in Article 158 § 3 of the CIP, a direct and automatic

consequence of the adversary party's opting not to take part in the proceedings was the impugned bar on the applicant's possibilities to plead her case orally at a public hearing before the Supreme Court. In other words, the rules in question in effect conferred upon one of the parties, the respondent in the appeal, a *de facto* possibility to decide unilaterally that the Supreme Court should not hear oral argument at all, thereby obliging the latter to determine the case on the basis of the case file without it being able to exercise a discretion as to the need to hold an oral hearing in the interest of the fairness of the proceedings. Thus, there is an apparent discrepancy between the national standards applied and the Convention case-law (summarised in paragraphs 33 and 34 above), notably the requirement that regard must be had particularly to the nature of the issues to be decided by the appellate court, and whether these raise any questions of fact or questions of law which cannot be adequately resolved on the basis of the case-file. The Court considers that the respondent State should take appropriate measures to ensure that it is the Convention standard that applies.

41. The Court further observes that, in finding the applicant liable to pay compensation to G., the District Court took into consideration what G. knew or ought to have known about the state of the roof at the time of the transaction. The Supreme Court had full jurisdiction to entertain questions of fact and of law, albeit in the absence of G.'s participation it was to rely on the case-file from the District Court and the applicant's appeal submissions. Moreover, in her appeal to the Supreme Court, the applicant disputed the District Court's interpretation of the description of the property and presented a number of arguments challenging its findings to the effect that G. had been ignorant about the actual state of the roof at the time in point. With regard to this matter, which appears to have been an important issue of fact raised in the applicant's appeal, it should also be noted that the applicant, as she had done unsuccessfully before the District Court, asked the Supreme Court to hear witnesses who had carried out work on the house for G. during the summer of 1999. In the light of this and bearing in mind what was at stake for the applicant, the Court finds that the question of her liability to pay compensation to G. could not, as a matter of fair trial, have been properly determined by the Supreme Court without a direct assessment of the evidence given by the parties in person (see, *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, p. 14, § 32; *Sigurþór Arnarsson v. Iceland*, no. 44671/98, § 36, 15 July 2003). However, for the reasons highlighted in paragraph 40 above, the absence of an oral hearing was a direct consequence of the application of Article 158 § 3 of the CIP, which barred the Supreme Court from exercising any discretion as to the need to hold an oral hearing in the interest of the fairness of the proceedings.

42. Having regard to the proceedings as a whole, the role of the Supreme Court and the nature of the issues to be determined by it, the Court finds that there were no special features to justify the absence before the Supreme Court of a public hearing. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed compensation of the pecuniary damage incurred as a result of the domestic proceedings, namely the ISK 3,607,067 (corresponding approximately to EUR 41,000 on the date of payment, 25 June 2004) she had been ordered to pay G., plus interest to be calculated from 25 June 2004 (as at December 2006 ISK 2,115,225) until the date of the European Court’s judgment. The applicant stressed that a minor pecuniary award or the mere finding of a violation could not constitute adequate just satisfaction in her case. She further claimed ISK 1,500,000 (approximately EUR 17,000) on account of anxiety and distress caused by the procedure and the outcome of the national proceedings.

45. The Government invited the Court to reject the applicant’s claim for pecuniary damage, arguing that there was no causal connection between this and the alleged violation of Article of the Convention. As regards the applicant’s claim for non-pecuniary damage, the Government invited the Court to hold that the finding of a violation constituted adequate just satisfaction. In any event, the amount claimed was excessive and any award made under this heading should be substantially reduced.

46. The Court rejects the claim for pecuniary damage as it cannot speculate on the outcome had an oral hearing been held before to the Supreme Court. On the other hand, it accepts that some anxiety and distress must have been occasioned by the matter found to constitute a violation of the Convention. Deciding on an equitable basis, the Court awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant also claimed altogether ISK 3,175,817 (approximately EUR 35,000), plus certain interests, for the costs and expenses incurred, in respect of the following items:

(a) ISK 860,250 plus interest (ISK 569,169 as at December 2006) for her lawyer's legal fees before the District Court and the Supreme Court;

(b) ISK 389,692 plus interest (ISK 197,285 as at December 2006) for certain appraisals;

(c) ISK 21,300 for miscellaneous expenses (transcripts from the District Court and "secretarial fees for the secretary of the Supreme Court";

(d) ISK 1,363,275 (approximately 15,000 euros) for legal fees for her lawyer's work (75 hours at ISK 15,000 per hour, value added tax included) before the European Court;

(e) ISK 532,300 (approximately 5,900 euros) for translation costs

48. The Government maintained that the fees claimed by the applicant's lawyer were unreasonably high.

49. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that only a minor part of the fees incurred before the Supreme Court, referred to under item (a), should be taken into account and item (a) should be rejected for the remainder, as should items (b) and (c). As regards item (d), the Court considers the number of hours spent somewhat excessive. Item (e) should be awarded in its entirety. Against this background the Court considers it reasonable to award EUR 18,000 under this heading.

C. Default interest

50. 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. *Declared* the application admissible;
2. *Held* that there has been a violation of Article 6 § 1 of the Convention;

3. *Held*

(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, the following amounts:

(i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damages;

(ii) EUR 18,000 (eighteen thousand euros) in respect of costs and expenses;

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

(b) that these sums are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(c) 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;

4. *Dismissed* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President