



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF STRZALKOWSKI v. POLAND

(Application no. 31509/02)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment may be subject to editorial revision.

In the case of Strzałkowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 31509/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 22 August 2002 by a Polish citizen, Mr Janusz Strzałkowski.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs. The applicant was represented by Ms J. Agacka-Indecka, a lawyer practising in Łódź.

3. The applicant alleged that his right to a fair trial had been violated in that the appeal hearing in his criminal case had been held in his absence.

4. On 19 October 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964. He is currently serving a prison sentence.

6. On 26 January 1998 he was arrested on suspicion of murder. The trial took place before the Warsaw Regional Court. The applicant, represented by a legal-aid lawyer, was present during the trial. The legal-aid lawyer

attended all hearings held before the court. On 22 February 2001 the Warsaw Regional Court convicted the applicant of murder and sentenced him to twenty-five years' imprisonment.

7. The applicant's lawyer filed an appeal against this judgment with the Warsaw Court of Appeal (the "Court of Appeal"). He argued, in particular, that the first-instance court had committed errors in the assessment of the evidence. It had wrongly held that the applicant had committed, together with another defendant A.K., a crime of murder, instead of finding the applicant guilty only of handling and selling goods stolen from the victim. The court had also erred in considering that the testimony given by A.K. was credible. The court had wrongly assessed certain other pieces of evidence on the basis of which it had accepted that the applicant had taken part in the crime. It was further argued that the court had failed to take into consideration circumstances pointing to the applicant's innocence and that it had breached the principle of the presumption of innocence.

8. On 17 July 2001 the applicant lodged his own appeal with the court, arguing essentially that he was not guilty, that the evidence had been wrongly assessed and that he should be acquitted. On 26 September 2001 the Warsaw Court of Appeal fixed the date of the hearing in the appeal proceedings for 28 November 2001. On the same date the court decided, referring to Article 451 of the Code of Criminal Procedure, that on 3 October 2001 it would hold a session to decide whether to bring the applicant from prison to attend the hearing.

9. On 3 October 2001 the applicant was served with the decision concerning the date fixed for the hearing. On the same date the court gave a decision *ex officio* concerning the applicant's presence at the hearing. By a letter from the court's registry, served on the applicant on 12 October 2001, he was informed of that decision. The letter read:

"The Warsaw Court of Appeal states that by a decision of 3 October 2001 it has decided not to bring the accused Janusz Strzałkowski to a hearing before that court, as his interests will be duly represented by his defence lawyer."

No appeal was available against that decision.

10. On 28 November 2001 the Court of Appeal held a hearing. The applicant's lawyer and the prosecutor were present. The court considered that the applicant had been properly summoned. The judge rapporteur of the Court of Appeal read out the appeal submitted by the applicant himself. The applicant's lawyer, in his oral pleadings, supported the arguments of the defence submitted in his appeal. The prosecutor requested the court to dismiss the appeal.

The Court of Appeal dismissed the appeals against the first-instance judgment. The court examined the grounds for the appeals adduced by the applicant's lawyer. In particular, the court stressed that no arguments had been advanced to persuade it that the findings of fact were incorrect. The first-instance court had found the applicant guilty essentially on the basis of

the testimony of other defendants. This evidence had been examined in a thorough manner against the background of other evidence available in the case. The first-instance court had exhaustively explained in the grounds for its judgment why it believed that the testimony given by the applicant himself had been unreliable. The appeals had failed to provide grounds on which to accept that the findings as to the applicant's participation in the crime and his guilt were erroneous. The statements made in this respect in the appeals had been flagrantly inconsistent with the evidence examined by the first-instance court. The first-instance court had carefully explained in the written grounds for its judgment why it had considered certain evidence as credible and other evidence implausible.

11. This judgment, together with its written grounds, was served on the applicant on 7 December 2001. Subsequently, he requested legal aid for the purposes of cassation proceedings and his request was granted.

12. The legal-aid lawyer, the same lawyer who had represented the applicant during the proceedings, was served with the written grounds for the judgment on 5 February 2002. By an undated letter which was served on the applicant on 26 February 2002, he was informed by his lawyer that he had not found grounds on which to prepare a cassation appeal and that he would inform the court accordingly. On the same day the lawyer informed the court of his position.

13. On 26 March 2002 the Warsaw Court of Appeal refused to assign a new legal-aid lawyer for the purposes of cassation proceedings, finding that there were no grounds on which to call into question the assessment of the prospects of success of such proceedings made by the first legal-aid lawyer. No appeal was available against this decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Presence of an accused at a hearing before the appellate courts

14. In 1997 a new Code of Criminal Procedure was enacted. Article 451 of the Code provided that an appellate court could order that a defendant be detained (under the Polish law detention during judicial proceedings is terminated only by a second-instance judgment) and that he be brought to the courtroom to attend a hearing before that court.

Article 452 of the Code of Criminal Procedure reads:

“§ 1. A court of appeal shall not be allowed to conduct evidentiary proceedings pertaining to the merits of the case.

§ 2. In exceptional cases the appellate court, if it finds the completion of a judicial examination necessary, may nevertheless accept new evidence directly at the hearing, if this will expedite the judicial proceedings and there is no necessity to reconduct the whole of the proceedings, or a major part thereof, anew. Before the hearing the court may issue an order on the admission of evidence.”

15. In 1999 the Supreme Court decided that during a hearing before an appellate court a defendant should have, at the very least, an opportunity to defend him- or herself, or to be represented by a defence lawyer (5 October 1999, IV KKN 334/99).

16. In a judgment of 29 March 2000 the Supreme Court stated that it was mandatory to bring the defendant to a hearing before the appellate court, regardless of whether he or she had made a relevant request (V KKN 111/98).

17. In a judgment of 4 October 2000 the Supreme Court stated that in cases in which the arguments made in the statement of appeal were limited to challenging exclusively legal aspects of a case or where only the sentence was challenged, a decision not to bring a defendant represented by a lawyer before the appellate court was correct (III KKN 164/2000).

18. In July 2000 Article 451 of the Code was amended, in response to the Court's judgment in the case of *Belziuk v. Poland* (25 March 1998, *Reports of Judgments and Decisions* 1998-II). The amended provision read:

“The appellate court shall order an accused, who is detained, to be brought to the appellate hearing, unless it finds that the presence of his lawyer is sufficient. If the court decides not to bring an accused who has no defence counsel to the hearing it shall appoint for him *ex officio* a legal-aid lawyer.”

19. In 2001 the Supreme Court examined the Ombudsman's request for clarification of issues relating to the presence of the accused at the appeal hearing. In its resolution of 18 October 2001 it expressed the view that the right to a fair hearing demanded that the person convicted by the first-instance court should be informed of his right to request to be brought before the appellate court and should be brought to such a hearing. It stated:

“...Finally, it should be underlined, that even if the accused requests to be brought to the appeal hearing, the court may establish that the presence of the lawyer at the appeal hearing would be sufficient. If the accused does not have counsel, it is necessary to appoint a legal-aid lawyer for him whose presence at the hearing would be obligatory. It should however be noted that if an accused deprived of liberty requests to be brought to the appeal hearing, granting such a request should be a rule... Finding that the presence of the lawyer would be sufficient could occur in particular if the appeal hearing concerned only questions of law.”

20. In 2003 Article 451 was further amended in that it became obligatory for an appellate court to inform the accused of his or her right to request leave to attend the hearing before that court.

2. Cassation appeal

21. The Supreme Court has examined, in numerous judgments, cassation appeals based on the allegation that the absence of an accused at the appeal hearing was a flagrant breach of law that could significantly affect the substance of the ruling in question, within the meaning of Article 523 of the Code of Criminal Procedure.

22. The Supreme Court on many occasions found that the refusal to bring the accused to the appeal hearing was a flagrant breach of law that could significantly affect the substance of the second-instance judgment. In such cases, the Supreme Court has quashed the appeal judgment and remitted the case (judgment of 10 August 2000, III KKN 192/00, judgment of 5 June 2001, III KKN 28/01).

23. Under Article 83 of the Code, an accused may appoint a lawyer to represent him or her in criminal proceedings. If he or she cannot afford lawyers' fees, a request for legal-aid may be made under Article 78 of the Code. Legal representation for the purposes of cassation proceedings is mandatory. In its decisions of 13 March and 17 September 2002 the Supreme Court expressed the view that when a legal-aid lawyer refused to represent a convicted person before the Supreme Court, the appellate court was not obliged to assign a new lawyer to the case (II KZ 11/02, II KZ 36/02).

THE LAW

I. THE ALLEGED VIOLATION OF ARTICLE 6 § 1 IN CONJUNCTION WITH 6 § 3 (c) OF THE CONVENTION

24. The applicant complained that the proceedings in his case had been unfair and his defence rights were seriously limited because he could not attend the only hearing held before the appellate court. He relied on Article 6 §§ 1 and 3 (c) of the Convention.

25. Given that the requirements of paragraph 3 (c) represent specific aspects of the right to a fair hearing guaranteed by Article 6 § 1, the Court will examine the applicant's complaints in the light of the two texts taken in combination (see, among many other authorities, *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I, and *Kamasinski v. Austria*, judgment of 19 December 1989, Series A no. 168, pp. 31-32, § 62). These provisions, in so far as relevant, read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial 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 does not have the means to pay for legal assistance, to be given it free when the interests of justice so require;”

A. Admissibility

26. The Government argued that the applicant had failed to comply with the six-month time-limit provided for by Article 35 § 1 of the Convention. They submitted that he should have lodged his application with the Court within six months of 28 November 2001 when the hearing was held before the Court of Appeal.

27. The applicant disagreed. He submitted that the six months' period had started to run on 26 February 2002 when the applicant had been informed of the legal-aid lawyer's refusal to prepare a cassation appeal on his behalf.

28. The Government further argued that the applicant had failed to exhaust relevant domestic remedies as he had failed to lodge a cassation appeal with the Supreme Court. Furthermore, after he had been served with the court's decision not to bring him to the hearing, he should have asked the court to reconsider it.

29. The applicant argued that no appeal was available in law against the decision not to bring him to the hearing. He clearly could not afford a lawyer, as confirmed by the decision to grant him legal aid. As his legal-aid lawyer had refused to prepare a cassation appeal against the judgment of the appellate court and the court had subsequently refused to assign another legal-aid lawyer to the case, he had been left without any legal remedies by which he could effectively challenge the decision not to bring him to the hearing.

30. As regards the first objection made by the Government, the Court reiterates that normally the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of. However, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to keep the Court informed of his complaint before his position in connection with the impugned matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Keenan v. the United Kingdom* (dec.), no. 27229/95, 22 May 1998).

31. In this connection and in so far as the Government have argued that to exhaust domestic remedies the applicant should have lodged a cassation appeal with the Supreme Court, the Court observes that under Polish law a cassation appeal can be brought by a party alleging a flagrant breach of any substantive or procedural provision of law capable of affecting the

substance of the judgment. That includes a breach of the right to defend himself in person and of the principle of equality of arms (see *Dobrowolski v. Poland* (dec.), no. 17842/02, 7 March 2006). The cassation appeal was therefore a remedy whereby the applicant could have effectively submitted the substance of his complaint to the Supreme Court and sought relief. The Court further notes that legal representation was mandatory for the purposes of preparing a cassation appeal.

However, in the applicant's case the legal-aid lawyer refused to prepare a cassation appeal against the judgment of the appellate court, finding no legal grounds on which to do so. Subsequently the court refused to assign another legal-aid lawyer to the case. The Court notes that the courts, by granting the applicant legal aid, acknowledged his lack of financial resources. The Court is of the view that the applicant should not therefore have been required to embark on further attempts to obtain legal assistance with a view to lodging a cassation appeal.

Hence, the Court considers that it was the court's refusal, on 26 February 2002, to assign a second legal-aid lawyer to the case which ultimately determined the applicant's ability to bring his procedural complaint to the attention of the Supreme Court. This refusal therefore amounted to a final decision in the process of the exhaustion of domestic remedies. The applicant brought his application to the Court on 22 August 2002, having thereby complied with the six-month requirement.

32. It follows that the plea of inadmissibility must be dismissed.

33. The Government further submitted that the applicant had never requested leave to be brought to the hearing, despite the fact that he had been informed about the court's decision on 3 October 2001, that is, almost two months before the date of the hearing.

34. The Court considers that the Government's preliminary objection under this head is closely linked to the merits of the applicant's complaint. Accordingly, it decides to join its examination to the merits of the case.

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

B. Merits

1. The parties' submissions

36. The Government emphasised that the applicant had failed to request that the court of appeal bring him to the hearing. That court had given the decision regarding his presence before it *ex officio*. Hence, the present case differed significantly from *Belziuk v. Poland*, referred to above, where such

a request had been made. The circumstances of the case were therefore similar to the situation examined by the Court in *Golubev v. Russia* (no. 26260/02, 9 November 2006) where the Court had found that since the applicant had been represented by a lawyer, it had not been necessary to bring him before the appellate court.

They further submitted that in the present case the appellate court had relied on Article 451 of the Code of Criminal Procedure. At the material time the court was not obliged to inform the accused *ex officio* that he had been entitled to request leave to be present. The decision of 3 October 2001 had therefore been in compliance with the applicable domestic law.

37. The Government further submitted that the applicant had been present and represented at all hearings before the first-instance court. He had been informed on 3 October 2001 of the court's refusal to bring him to the hearing scheduled for 28 November 2001, so he had had ample time to ask the court to reconsider its decision. He could also have asked his lawyer for advice. It had not been shown that he had done that. His lawyer had been present at the hearing before the appellate court and could have submitted the applicant's arguments. As the prosecution had not appealed against the judgment, the principle of equality of arms had not been breached. The court had not obtained any supplementary evidence. Hence, the applicant's presence had not been necessary and his absence had not limited his defence rights.

38. The applicant argued that he had not been aware of his right to request to be brought before the Court of Appeal. His absence before that court had rendered the proceedings unfair as he had not been able to ask questions which were, in his view, necessary for the assessment of his guilt or innocence. No appeal had been available in law against the decision not to bring him before the appellate court. He could only raise this complaint in a cassation appeal. It had ultimately been impossible for him to do so as the legal-aid lawyer refused to prepare such an appeal on his behalf.

2. *The Court's assessment*

(a) **General principles**

39. The Court reiterates that the object and purpose of the Article 6 taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraph (c) guarantees to "everyone charged with a criminal offence" the right "to defend himself in person" and it is difficult to see how he could exercise these rights without being present (see *Colozza v. Italy*, judgment of 12 February 1985, Series A no. 89, p. 14, § 27, and *Sejdovic v. Italy* [GC], no. 56581/00, § 81, ECHR 2006-...).

40. Nonetheless, the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial

hearing (see *Kamasinski v. Austria*, 19 December 1989, § 106, Series A no. 168). The manner in which Article 6 is applied 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 (see *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, § 27, and *Monnell and Morris v. the United Kingdom*, cited above, § 56). Proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, despite the fact that the appellant is not given the opportunity to be heard in person by the appeal or cassation court, provided that a public hearing is held at first instance (see, among other authorities, *Monnell and Morris*, cited above, p. 22, § 58, as regards the issue of leave to appeal, and *Sutter v. Switzerland*, judgment of 22 February 1984, Series A no. 74, p. 13, § 30, as regards the court of cassation).

41. However, even where the court of appeal has jurisdiction to review the case both as to the facts and to the law, Article 6 does not always require a right to a public hearing, still less a right to appear in person (see *Fejde v. Sweden*, judgment of 29 October 1991, Series A no. 212-C, p. 68, § 31). In order to decide this question, regard must be had, among other considerations, to the specific features of the proceedings in question and to the manner in which the applicant's interests were actually presented and protected before the appellate court, particularly in the light of the nature of the issues to be decided by it (see *Belziuk v. Poland*, referred to above, § 37, *Hermi v. Italy* [GC], no. 18114/02, § 60, ECHR 2006-...). Where an appellate court has to examine a case as to the facts and the law and make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004). The wider concept of a fair trial also includes the fundamental right that criminal proceedings should be adversarial. The latter 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 (see, among other authorities, *Brandstetter v. Austria*, 28 August 1991, §§ 66 and 67, Series A no. 211).

42. Lastly, the Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantee of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2001, and *Hermi v. Italy*, cited above, § 73). However, such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance

(see *Poitrimol v. France*, 23 November 1993, § 31, Series A no. 277-A). Furthermore, in view of the prominent place held in a democratic society by the right to a fair trial, Article 6 of the Convention imposes on every national court an obligation to check whether the defendant has been informed of the date of the hearing and of the steps to be taken in order to take part (see, *mutatis mutandis*, *Somogyi v. Italy*, no. 67972/01, § 72, ECHR 2004-IV, and *Hermi v. Italy* [GC], cited above, § 76).

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

43. The Court first notes that in the proceedings before the first-instance court the applicant, who was legally represented, was present and gave evidence in person.

44. The Court further notes that the applicant asserts that his right to defend himself was violated by the fact that he was not present at the only hearing held before the court of appeal. The appellate court decided that his presence was not necessary, having regard to the fact that the applicant was legally represented.

45. The Court observes that in his appeal the applicant argued, *inter alia*, that the trial court had committed errors in the assessment of the evidence and that the establishment of the facts had been erroneous. Hence, the applicant essentially sought to challenge the soundness of his conviction on the facts. The appeal against the first-instance judgment was therefore not limited to the legal aspects of the case. It is further noted that under domestic law the court of appeal was empowered to hear evidence *de novo* in certain circumstances (see paragraph 23 above).

46. In this context, the Court notes that the appellate court decided not to bring the applicant to the courtroom, having regard to the fact that he was legally represented at the appeal hearing. It accepts that the fact that an accused is properly represented before a court of appeal is, for obvious reasons, of direct relevance for ensuring that the hearing was fair.

However, it notes that in its decision no reference was made by the Court of Appeal to the specific grounds of appeal submitted by the applicant. Nor did the court make any distinction between the factual issues raised by the applicant which were ultimately relevant for the assessment of his guilt or innocence, and merely legal issues. There is no indication that the court considered that this distinction was pertinent to the decision it had to take regarding the applicant's presence during the hearing (compare and contrast *Hermi v. Italy*, cited above, § 84-85).

47. The Court further notes that the Court of Appeal, in the grounds for its judgment, focused on issues pertaining to the assessment of the evidence and on the manner in which the first-instance court had made findings relevant to the applicant's guilt. The Court observes that under the relevant provisions of the Polish law of criminal procedure the jurisdiction of an appeal court to questions of both fact and law. It considers that in such

circumstances where the scope of a particular appeal filed with such a court is not confined to pure questions of law, Article 6 requires, in the absence of compelling reasons to the contrary, that the accused be allowed to be present at the hearing of his appeal and that he be notified in advance in clear terms of his right to do so.

48. In the circumstances described above and given also the nature of the grounds of appeal advanced by the applicant and his lawyer, the Court considers that the issues to be determined by the court of appeal could not, 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*, *Belziuk v. Poland*, cited above, § 38).

49. The Court further observes that the public prosecutor attended the hearing and requested the court not to allow the appeals lodged by the defence. In the circumstances described above and given that the nature of the grounds of appeal advanced by the applicant warranted his presence before the court, the Court is of the view that the mere presence of the lawyer could not redress the unfavourable lack of balance between the prosecution and defence.

50. Having regard to its findings, the Court considers that the proceedings before the Regional Court did not comply with the requirements of fairness.

51. It remains to be determined whether, as argued by the Government the applicant lost the opportunity to be present at the appeal hearing by failing to submit a relevant request, in other words whether he had waived his right to take part in the appeal hearing.

52. The Court observes that no explicit waiver was made in the present case. Hence, an issue arises whether the applicant's conduct could reasonably be regarded as unequivocal waiver of his procedural rights (see *Hermi v. Italy*, cited above, § 72; see also paragraph 42 above). On 12 October 2001 the applicant was informed that the Court of Appeal had decided that his presence at the hearing was not necessary. However, it has not been shown or argued that the applicant was properly informed that he had to make a special request if he wished to attend the hearing. Regard must be had in this respect to the provisions of domestic law to establish whether the procedure concerning the presence of an accused before the court of appeal are laid down there in a sufficiently clear manner.

53. The Court notes that the circumstances examined in the present case resemble, to a certain extent, the case of *Hermi v. Italy*. In that case the applicant, who was represented by two lawyers, had been informed of the appeal hearing more than two months in advance but did not apply to attend it until after the deadline of five days before the hearing. The procedure for applying to the court had been clearly set out in the domestic law. The Court found that the domestic court had been entitled to take the applicant's conduct as a tacit but unequivocal waiver, in particular as making the

requisite application would not have involved the applicant in any excessive procedural formalities (see *Hermi*, cited above, §§ 89-103).

54. In the present case, the Court observes that Article 451 of the Code of Criminal Procedure, as it stood at the material time, did not expressly state that in order to participate in a hearing a defendant had to make a special request. Nor did it provide for an obligation on the court's part to inform a defendant of his right to submit such a request. It was only in 2003 that this provision was amended. It was then that it became obligatory for an appellate court to inform the accused of his or her right to request leave to attend the hearing before that court. No arguments have been advanced by the Government to show that in the present case the applicant had been properly informed of the steps he had to take in order to be allowed to attend the hearing. In such circumstances it cannot be said that the applicant waived his right in a clear and unequivocal manner.

55. Having regard to its findings in paragraphs 41 and 55 above, the Court considers that the proceedings before the Court of Appeal did not comply with the requirements of fairness. There has accordingly been a violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

56. The applicant complained that the courts had wrongly assessed the evidence, disregarded certain of his requests for evidence to be included and, as a result, had failed to establish the facts of the case correctly and had made wrong decisions. He should not have been found guilty. He further submitted that he had not had access to a part of the case file and that he had been prevented from putting questions to the witnesses.

57. As to the assessment of evidence, the Court reiterates that, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

58. In so far as the applicant complains that he was denied access to the case file and was not given the opportunity to put questions to the witnesses, the Court notes that he has failed to substantiate these complaints.

59. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 30,000 Polish zlotys (PLN) in respect of pecuniary damage connection with his criminal conviction. He further claimed 75,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

62. The Government contested the applicant’s claim.

63. The Court finds no link between the violation complained of and the pecuniary damage alleged. It cannot speculate about the outcome of the proceedings had the applicant participated in the hearing before the court of appeal. The Court therefore rejects the claim in its entirety.

64. On the other hand, the Court considers that the applicant must have suffered distress and frustration from the violation of his right to a fair hearing. However, the amount claimed appears to be excessive. Making its assessment on an equitable basis, the Court awards the applicant 1,500 euros (EUR) in that respect, plus any tax that may be chargeable on that amount.

B. Costs and expenses

65. The applicant did not claim reimbursement of the costs and expenses incurred before the Court over and above the amount which had been granted to him by the Court by way of legal aid.

C. Default interest

66. 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. *Declares* the complaint concerning the applicant’s presence before the Court of Appeal admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President